



# LEGAL OBSERVER,

## Digest,

AND

JOURNAL OF JURISPRUDENCE.

---

PUBLISHED WEEKLY.

---

MAY TO OCTOBER, 1847,

INCLUSIVE.

---

—“Quod magis ad nos  
Pertinet, et nesciro malum est, agitamus.”

---

HORAT.

VOL. XXXIV.

LONDON:

PUBLISHED FOR THE PROPRIETORS

BY ALEXANDER MAXWELL AND SON,

LAW BOOKSELLERS AND PUBLISHERS, 32, BELL YARD, LINCOLN'S INN;

SOLD BY SHERWOOD AND CO., PATERNOSTER ROW;

ADAM AND CHARLES BLACK, EDINBURGH;

AND HODGES AND SMITH, DUBLIN.

---

1847.



LONDON:

PRINTED BY G. J. PALMER, SAVOY STREET, STRAND.

# CONTENTS OF VOLUME XXXIV.

## RECENT DECISIONS IN THE SUPERIOR COURTS, REPORTED BY BARRISTERS OF THE SEVERAL COURTS, VIZ. :

### In the Courts of *Equity* :

E. Vansittart Neale, Esq.  
J. H. Cooke, Esq.  
P. B. Maxwell, Esq.  
J. F. Villiers, Esq.  
Charles Gifford, Esq.

### In the Courts of *Common Law* :

William Bagley, Esq.  
John Hamerton, Esq.  
A. P. Hurlstone, Esq.  
P. M'Mahon, Esq.  
Henry T. Cole, Esq.  
C. H. Scotland, Esq.

## ANALYTICAL DIGEST OF CASES,

### REPORTED IN ALL THE COURTS :

- |  |   |
|--|---|
| <p>I. <i>Privy Council</i>, 247.</p> <p>II. <i>Courts of Equity</i> :</p> <p>1. Principles of Equity, 127</p> <p>2. Construction of Wills, 56</p> <p>3. Construction of Statutes, 101</p> <p>4. Pleadings, 148</p> <p>5. Practice, 173</p> <p>III. <i>Common Law Courts</i> :</p> <p>1. Construction of Statutes, 424, 442</p> <p>2. Principles of the Common Law and Grounds of Action, 525</p> <p>3. Pleadings, 548, 568</p> | <p>4. Practice, 600, 615</p> <p>5. Evidence, 465</p> <p>6. Law of Nisi Prius, 321</p> <p>IV. Law of Property and Conveyancing, 74, 512</p> <p>V. Bankruptcy, 269</p> <p>VI. Criminal Law, 294</p> <p>VII. Poor Law and Magistrates' Cases, 350</p> <p>VIII. Law of Costs, 31, 244, 377</p> <p>IX. Law of Attorneys and Solicitors, 8, 224, 376</p> <p>X. Law of Arbitration, 494</p> <p>XI. Law of Railways, 402.</p> |
|--|---|

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW :

Drainage of Land,\*94  
Inclosure of Commons, 120  
Abolition of Mastership in Chancery, 236  
Threatening Letters, 286  
Custody of Offenders, 287  
Bankruptcy and Insolvency, 310  
Removal of Poor, 313, 414  
Chancery Affidavit Office, 337  
House of Commons Costs Taxation, 339  
Securing Trust Funds and Relief of Trustees, 365  
Tithes Amendment, 366  
Juvenile Offenders, 392  
Copyhold Commission, 437  
Rating Stock in Trade, 437  
Administration of Poor Laws, 458  
Colonial Copyrights, 456  
City of London Small Debts Act, 471, 504  
Highway Rates, 499  
Turnpike Acts, 500  
Canal Carriers, 522  
Ecclesiastical Jurisdiction, 540  
Commons Inclosure Amendment, 560  
Marriages of Quakers and Jews, 562  
Carriage of Passengers by Sea, 581  
Joint Stock Companies, 610  
Table of Public Statutes, 415  
Table of Local and Personal Acts, 459, 506, 563, 591  
Private Acts, 594

## NOTES ON AND CONSTRUCTION OF STATUTES.

Copyright in unpaid for Contributions, 4  
Separate Agreement on the same Paper, 48

Promissory Notes, payable to the Maker's Order, invalid, 68  
Delivery of Conveyancing Bill before the Statute, 142  
Stamp Act—Agreement for Railway Scrip, 282  
Bankruptcy and Insolvency Act, 373, 577  
The Last New Bankruptcy and Insolvency Act, 429  
Action against a Returning Officer, 498  
Threatening Letters—Custody of Offenders, 579  
Juvenile Offenders, 537

## NEW BILLS IN PARLIAMENT.

Fees of the House of Commons, 50  
Taxation of Parliamentary Costs, 70  
Investment of Trust Monies, 263

## THE LAW RELATING TO MEMBERS OF PARLIAMENT, 305, 333

Election Recognizances and Select Committees, 385  
Proceedings and Practice of Election Committees, 409  
Exemption from Arrest, 536, 469, 497, 523  
Expenses of Witnesses and Costs of Election Petitions, 449

## LAW REFORM AND SUGGESTED IMPROVEMENTS :

Bankruptcy and Insolvency, 1, 20, 65  
Proceedings in Parliament, 89, 161  
Abolition of Mastership in Chancery, 164  
Abolition of Court of Review and alterations in the jurisdiction in Bankruptcy and Insolvency, 172, 209  
House of Commons Costs Taxation, 213

**Business of the Common Law Courts—contemporaneous Sittings in Banco and Nisi Prius—separate Bars, 233**

**Representation of the Profession in Parliament, 236, 257, 288, 309, 341, 351, 402, 414**

**Criminal Law—Transportation of Juvenile Offenders, 240**

**Cultivation of Waste Land, 288**

**Legal Results of the Session of Parliament, 281**

**Law of Marriage, 291, 438, 458**

**Defects in Modern Acts of Parliament, 342**

**Arrangement of Business on the Circuits, 363**

**Proposed Investment of Trust Monies without Professional Aid, 369**

**Public Record Buildings on the Rolls' Estate, 370**

**Improvements in Chancery Practice,—Affidavit Office, 398**

**Vacation Fees on Bankruptcy Fiats, 470**

**Revival of Action of Account, 541**

**Insolvents Protection, 544**

**Commercial Failures—Avoidance of Court of Bankruptcy, 558**

**Public Interference with Judicial Decision, 608**  
**Injustice and Impolicy of Conveyancing Stamps, 610**

#### PARLIAMENTARY REPORTS.

**Select Committee on Railways, 144**

**Select Committee on Legal Education, 165, 214, 263, 343, 399, 488, 501**

**Commissioners in Lunacy, 218**

**Tithe Commissioners, 246**

#### SMALL DEBT OR COUNTY COURTS.

**Practice in, 4**

**Remedy against Tenant's holding over, 17, 67**

**Costs in, 49, 172, 219**

**Grievance of Assessors, 72**

**Unqualified Practitioners, 74, 146**

**Appointments, 126**

**Operation of Act, 99, 137, 145, 418, 503, 605**

**Illegal Commitment, 211**

**Illegal Associations for Recovery of Small Debts, 243**

**Construction of Act, 243**

**Inadequate Fees of Practitioners, 521**

**Jurisdiction of the Court, 545, 562, 585**

**The Public, the Profession, and the County Courts, 557**

**Westminster County Court, 585**

#### NEW RULES AND ORDERS.

**Amending Bills, 292**

**Transfer of Causes, 292**

**House of Commons Fees on Taxation, 293**

**Prisoners' Advisers, 541**

**BE AT THE JUDGES' C**

#### PROPERTY LAWYER.

**Stamp on Further Mortgage Security, 49**

**Insufficient notice to Quit, 234**

**Form and Effect of a Guarantee, 433**

**Law of Wills—Devise to the subsequent Wife of a Witness, 5**

**Appointment of New Trustees, 100**

**Registry of Deeds, 100, 145, 219**

#### POINTS IN COMMON LAW AND PRACTICE.

**Unauthorized Examination of Party by Arbitrator, 20**

**Certificate for Costs upon Inquiry before Under-sheriff, 120**

**Promissory Note payable to Maker's Order, 169**

**Necessity of Pleading Payment—Insufficient Costs of Pleadings, 262**

**Time for Signing Judgment after a Certificate or Award by an Arbitrator, 364**

**Determination of Yearly Tenancy, 607**

**Witness—Shareholder, 275**

**Mutual Assurance Society, 493**

#### LAW OF RAILWAYS.

**Actions by Allottees, 90, 118**

**Law relating to the Bankruptcy of Railway Companies, 259**

#### HISTORICAL SKETCHES OF THE PROFESSION.

**No. 1. Attorneys and Solicitors—Statutes—Rules of Court, 388**

**No. 2. Regulations of the Inns of Court relating to Attorneys, 434**

**No. 3. The Inns of Court, 517**

**VISITS TO THE OLD LAWYERS, 415, 523, 586**

#### LAW OF ATTORNEYS.

**Defective Bill of Costs—Name of Court in which business done, 97**

**Responsibility of Attorneys, 283**

**Attorneys' Liability for Bailiff's Fees, 357**

**Liability for Negligence—Authority, 412**

**Forgery, &c., alteration of Writ by an Attorney, 214**

**Effect of Non-delivery of Signed Bill under plea of Set-off, 471**

**Annual Registration, 536, 576, 611**

**Advocacy at Insolvent Debtor's Court, 611**

**Certificate Duty, 99**

**Costs, 275**

#### EXAMINATION OF ARTICLED CLERKS.

**Questions at the Examination, 6, 123**

**Information relating to the Examination, 52**

**Candidates Passed, 147**

**Result of, 52, 125**

**Michaelmas Term Examination, 611**

#### NOTICES OF NEW BOOKS.

**Hodges' Law of Railways, 70**

**Rogerson's Chancery Practice, 171**

**Chitty's Commercial and General Lawyer, 171**

**Foss's Lord Chancellors and Keepers of the Seal in the Reign of King John, 237**

**Crabb's Digest and Index to all the Statutes, 284**

**Mitford's Treatise on Pleadings in Suits in the Court of Chancery, 313**

**Cooke's Practice of the Ecclesiastical Courts, 367**

**Platt's Treatise on the Law of Leases, 396**

**Toulmin's Statutes and Orders relating to Practice and Pleadings in the High Court of Chancery, 213**

**Bissett's Law of Partnership, 431**

**Moseley on the New County Courts, 491**

**Bowyer's Commentaries on the Constitutional Law of England, 500**

**Finlason's Leading Cases on Pleading, 609**

**REMARKABLE FOREIGN TRIAL, 586**

#### PROCEEDINGS OF LAW SOCIETIES.

**Metropolitan and Provincial Law Association, 41, 69, 92, 116, 141, 169, 294, 375, 392, 428, 437, 457, 492, 502, 562, 583**

**Incorporated Law Society, 69**

**Liverpool Law Society, 169**

**Leeds Law Society, 169**

**Manchester Law Association, 169**

# CONTENTS.—TABLE OF TITLES IN THE ANALYTICAL DIGEST

Society for Promoting the Amendment of the Law, 244, 541	Transfer of Chancery Causes, 159
Law Association for the Benefit of the Widows and Families of Professional Men, 293	Nisi Prius Cause Lists, 15, 37, 608
United Law Clerks' Society, 317	Circuits of the Insolvent Debtors' Commissioners, 220
Yorkshire Law Society, 375	City of London Small Debts Court, 496
Denbighshire and Flintshire Law Association, 375	PROFESSIONAL LISTS:
LEGAL OBITUARY, 108, 350, 536	Barristers called, 418
LAW PROMOTIONS AND APPOINTMENTS, 256, 408	Attorneys to be admitted, 29, 52, 221, 226, 350
CIRCUITS, SITTINGS, CAUSE LISTS, &c.:	Renewal of Attorneys' Certificates, 100, 350
Chancery Sittings, 64, 83, 182, 575	Masters Extra. in Chancery, 112, 384, 428, 536
Chancery Cause Lists, 109	Perpetual Commissioners, 112
Common Law Sittings, 40, 84, 160, 576, 620	Dissolution of Professional Partnerships, 112, 232, 332, 428, 536, 623.
— Cause Lists, 84, 111, 620	
Special Business of the Courts, 136, 160, 184	

## TABLE OF TITLES IN THE ANALYTICAL DIGEST.

Abatement, 148, 548	Bankrupt, expenses of, 269
Abortion, 294	— fiat of, 269
Absolute interest, 56	Bankruptcy fees, 31
Accord and satisfaction, 548	Barrister on circuit, 321
Account, 127, 173, 549	Bastardy, 351
Accumulation, 56	Battery, 294
Act of Bankruptcy, 269	Bequest to widow, 56
Action by an attorney, 376	Biddings at sales, 74
— promoter, 402	Bigamy, 425
Administration suit, 31, 127, 173	Bill of Costs, 8, 376
Admission in inferior court, 8	— discovery, 224
Admissions, 127, 294, 465	— Exchange, 322, 526, 551
Affidavit, 31, 173, 350, 600	Bond, 425, 526, 551
— of debt, 269	Breach of trust, 224
Agent, 173, 402, 525	— of promise of marriage, 322
Agreement, 321, 526	— contract, 322
Aggrieved parties, 350	Building, 322
Allottee, 402	Burglary, 294
Alteration of line, 403	Buying in, 269
Amended fiat, 269	Bye Law, 404
Amending Bill, 148, 173	
Amendment, 321, 549, 601	Calls, 404
Annuities, 56, 269, 550	Cargo, 322
Annulling Fiat, 269	Carrier, 527
Answer, 149, 173	Certificate, renewal of, 376
Appeal, 31, 127, 173, 350	Certiorari, 351
Appearance, 173, 601	Changing venue, 270
Appointment, 127	Chargeability, 351
Apportionment, 127	Charity, 149, 173
Arbitration, 377, 464, 550	Charterparty, 527
Argumentative averment, 550	Children, 56
Arrest, 321, 403, 550, 601	Church rate 274, 351
— of attorney, 376	Client, 376
Articled clerk, 8	Coal Act, 425
Articles of clerkship, 376	Cognovit, 602
— of the peace, 351	Colonial appeal, 247
Assault, 294	Commissioner, order of, 352
Assets, 127	Committee, 404
Assignees' accounts, 269	Commitment, 270
Assignment, 512	Competency of witness, 322
Assumpsit, 526	Compromise, 352
Attachment, 8, 127, 173, 351, 476	Conveyancing, 512
Attorney's appearance, 351	Conviction, 425
— liability, 403	Contempt, 101, 173
Award, 101, 495	Contract, 322, 404, 465, 528, 552
	Copyright, 323, 425
Bailiff, 550	Coroner, 295, 426
Bail, 551	Corporations, 101, 528
Bankrupt, 101, 149, 294, 424, 601	Costs, 174, 270, 323, 352

- Counsel's signature, 376, 377  
 Court Baron, 602  
 Covenant, 512, 558  
     — as to a building, 270  
 Cow-keeper, 270  
 Creditor, 277, 270  
 Creditor's suit, 31, 128, 149, 174  
 Criminal Court, Central, 435  
 Coverture, 553  
 Cross Bill, 149  
 Cumulative legacies, 56  
 Custom of trade, 323  
 Customary freehold, 573  
  
 Damage feasant, 323  
 Dangerous animals, 553  
 Death of bankrupt, 270  
 Debt, 553  
 Decree, 174  
 Deed, 74  
 Delivery of bill, 224  
     — of papers, 224  
 Demise, 323  
 Demurrer, 31, 140, 174, 553, 602  
 Deposit of title-deeds, 74  
 Depositions, 295  
 Devise, 513  
 Devisees, 128  
 Detenué, 323, 553  
 Discontinuance, 577  
 Discovery, 31  
 Dismissal of bill, 31, 170, 174  
 Distribution, Statute of, 57  
 Distringas, 602  
 Dividend, 270  
 Divorce, 247  
 Documents, 467  
 Domicile, 247  
 Dower, 75  
 Duplicity, 554  
  
 Ecclesiastical Courts, 247  
 Ejectment, 404, 425, 515, 554  
 Election, 57, 425, 528  
 Illegit creditor, 174  
 Emancipation of pauper, 392  
 Embezzlement, 573  
 Enlargement of time, 490  
 Escape, 323  
 Error, 426, 602  
 Estate tail, 57  
 Estoppel, 554  
 Evidence, 31, 57, 156, 247, 270, 297, 323, 467, 602  
 Examination, 270, 573  
 Examination of plaintiff, 492  
 Exceptions to report, 173  
 Exchequer, Equity, 101  
 Excise, 427  
 Execution, 175, 603  
 Executor, de son tort, 128  
     — 31, 57, 75, 128, 224, 513, 603  
 Extent, 529  
  
 False imprisonment, 293, 465  
 Feigned issues, 554  
 Feme covert, 378, 427  
 First fruits, 442  
 Fixtures, 323  
 Foreclosure, 173  
 Foreign funds, 57  
     — law, 128, 247, 323, 554  
 Forgery, 296  
 Frauds, Statute of, 427  
  
 Freight, 323  
 Frivolous demurrer, 553  
 Fund in court, 224  
 Further directions, 175  
  
 Guarantee, 323  
 Guardian, 8, 175, 529  
     — and ward, 129  
  
 Habeas Corpus, 442, 603  
 Hackney carriage, 530  
 Heriot custom, 555  
 Heir, 175  
     — at law, 58  
 Heritable bond, 58  
 Highway, 296, 372, 443  
 Hiring, 572  
 Horse, 323  
 Husband and Wife, 129, 323, 555  
  
 Imprisonment, 530  
 Inclosure, 513  
 Indictment, 443  
 Incomplete testamentary paper, 58  
 Incumbent, 129  
 Indemnity, 129  
 Infant, 101, 129, 175  
 Inferior court, 9  
 Inhabitaney, 352  
 Injunction, 31, 129, 173  
 Inquisition, 615  
 Inrolment of decree, 173  
 Insolvent, 270, 443  
     — Debtors, 101, 530  
 Insurance, policy of, 101, 550  
 Interest, 75, 443  
 Interpleader, 101, 342, 378, 443, 613  
     — suit, 175  
 Irregularity, 173, 615  
 Issuable plea, 573  
 Issue, 58, 176, 613  
 Issues of fact, 744  
  
 Joint estate, 270  
 Joinder in demurrer, 573  
 Joint stock banking company, 176, 573  
     — company, 270  
 Joint-tenancy, 583  
 Jointure, 75  
 Judge's order, 616  
  
 Judgment as in case of nonsuit, 378, 616  
     — creditor, 176  
     — debt, 444  
     — manor court, 465  
 Jurisdiction, 9, 75, 101, 130, 176, 270, 296, 362  
 Justification, 556  
  
 Liches, 130  
 Land clauses consolidation, 102  
 Lord and Tenant, 324, 513, 568  
 Lapsed bequest, 58  
 Larceny, 296  
 Lease, 514, 552  
 Legacy, 58, 130, 176  
 Legatee, 32, 224  
 Lessee, 32  
 Libel, 297, 568  
 Lien, 9, 75, 224, 270, 375  
 Limitations, (Statute of), 102, 156, 444, 466  
 Lunatic, 129, 271, 444  
 Lottery, 531  
 Local Act, 568

# TABLE OF TITLES IN THE ANALYTICAL DIGEST.

Magistrate, 342, 353  
Malpractice, 224  
Maintenance out of workhouse, 353  
Mandamus, 353, 378, 445, 616  
Manslaughter, 297  
Marriage, 247, 531  
Married Woman, 73, 131, 176, 569  
Marshalling of assets, 59  
Master and servant, 531  
Masters' office, 176  
Messenger's oath, 175  
Misdescription of legatee, 59  
———— bankrupt's residence, 271  
Misdirection, 617  
Misjoinder, 150  
Money lent, 466  
———— had and received, 531  
Month, 234  
Mortgage, 32, 73, 102, 150  
Mortgagor and mortgagee, 131  
Municipal Corporation, 102, 445  
Murder, 297  
Ne exeat regno, 176  
Negligence, 9, 377, 466, 569  
New trial, 466  
Next friend, 176  
Nonjoinder, 569  
Notice, 176, 333  
———— of admission, 9  
———— of motion, 32  
———— of taxation, 33, 378  
———— to quit, 325, 467, 515  
Nuisance, 298  
Occupation, 325  
Office fees, 271  
Officer of the court, 248  
Official assignee, 271  
Opening biddings, 176  
Order of course, 176  
———— in Chancery, 271  
Order, 371  
Outlawry, 150, 617  
Ownership, 325  
Parson, 298  
Parent and child, 59  
Parliamentary costs, 225  
Particulars of demand, 325, 617  
Parties, 150  
Partners, 351  
Partnership, 131, 151, 271, 404  
Passenger, 332  
Patent, 177, 248, 532  
Pauper, 52, 102, 151, 177, 617  
Payment of money into court, 32, 177, 371  
———— plea of, 569  
———— to solicitor, 9  
Perpetuity, 39  
Per stirpes, 59  
Petition of right, 177  
———— to Lord Chancellor, 271  
Petitioning creditor's debt, 271  
Pilot Act, 445  
Piloting, 548, 568  
Poaching, 298  
Postponement of trial, 325  
Post-mortem, 467  
Power of appointment, 59  
Practice, Common Law, 600, 615  
Precatory words, 59  
Principal, 298  
———— and agent, 177, 325  
———— and surety, 533

Priority of solicitor's costs, 271  
Privilege, 325, 377  
Privileged communications, 9, 151  
Probate, diocesan, 76  
———— duty, 102  
Pro confesso, 102, 151, 177  
Production of documents, 9, 354  
———— papers, 177, 325  
Promissory note, 533, 570  
Proof, 271  
Prospectus, 105  
Provisional committee, 404  
Publication, passing, 151  
Public officer, 177  
———— policy, 131  
Purchase, 405  
Qualifying gift, 59  
Railway, 402  
———— company, 325  
Rates, 248, 354  
Receiver, 131, 177  
Recitals, 467, 571  
Recognizance, 177  
Record of conviction, 445  
Redemption, 76, 151  
Registration appeal, 378  
———— of deed, 446  
Rehearing, 151  
Rejoinder, 178  
Release by assignee, 102  
Remanet, 378  
Remoteness, 59  
Removal, 355  
———— of hat, 272  
Report, 178  
Replication, 32, 171, 371, 618  
Republication of will, 60  
Reputed ownership, 172  
Requests, Court of, 446  
Residuary bequest, 60  
Responsibility of solicitor, 225  
Retainer, 9  
Reversionary interest, 60  
Revivor, 151  
Revocation, conditional, 60  
Right to begin, 178, 326, 618  
———— reply, 326  
Robbery, 298  
Roll of attorneys, 9  
Sale, 76, 618  
———— of goods, 326  
Secondary evidence, 326, 467  
Security, 272  
———— for costs, 32, 225  
Seisin, 326  
Service of copy bill, 171, 178  
———— of notice, 178  
———— of appeal, 356  
———— of subpoena, 178  
Set-off, 52, 273, 371  
Setting aside execution, 32  
———— down cause, 178  
———— off debt, 60  
Several issues, 378  
Settlement, 60, 76, 356  
Shares, 273  
Shareholder, 405  
Sheriff, 326, 446, 533  
———— Court, 9  
Ship, 446  
Showing cause, 32  
Signed bill of costs, 9, 225

Slander, 336, 467, 534, 572	Tithes, 447
Slave, 248, 534	Title, 77
Solicitor, 273	Trade fixtures, 327
— and client, 33	Trading, 273
Special case, 378, 618	Traverse, 572
Specialty debts, 131	Traversing note, 178
Specific legacy, 60	Trespass, 379, 572
— performance, 76, 131, 151	Trial, 298, 397, 619
Speedy execution, 327	Trover, 327, 573
Stamp, 446	Trustee, 102, 152, 226
Statute of Frauds, 273	Trusts, 60, 77, 131, 275
Stock Exchange, 326	
— East India, 535	Uncertainty in pleading, 573
Stoppage in transitu, 273	Undertaking, 10, 377, 468, 617
Statutes, construction of, 424	Use and occupation, 516, 574
Staying proceedings, 178, 618	Usury, 447
Striking off the roll, 9, 225	
Subpœna to rejoin, 178	Variance, 327
— duces tecum, 357	Vendor and Purchaser, 33, 78, 516
Substitutional legacies, 60	Venue, 298, 327, 377, 619
Suggestion on record, 379	View, 298
Suit for costs, 33	Voluntary settlement, 78
Summons at chambers, 379	
Supplemental bill, 151	Ward, 78, 132
Surrender, 273	Warrant, 273, 619
Suspending advertisement, 273	— of attorney, 448, 535
	Warranty of a horse, 327
Tail, estate, 60	Waste, 103, 132, 574
Taxation, 9, 33, 131, 225, 273, 357, 377, 379	Way right of, 468, 516
Taxes, 326	Wharfinger, 574
Tenant in tail, 273	Widow, 61
Tenants, in common, 77	Wife, 525
Tender, 32, 326	Will, 248
Threatening letters, 298	Witness, 33, 298, 327, 379, 468
Time of appeal, 357	Worsted Act, 448
	Work and labour, 535

## TABLE OF REPORTS DIGESTED.

<i>Court.</i>	<i>Reporters.</i>	<i>Abbreviations.</i>	<i>Vol. and Part.</i>
Privy Council - - -	Moore - - - - -	Moore - - - - -	Vol. 4, Part 3.
Lord Chancellor - - -	Phillips - - - - -	Phill. - - - - -	Vol. 2, Part 1.
Master of the Rolls - - -	Beavan - - - - -	Beav. - - - - -	Vol. 8, Parts 2, 3.
Vice-Chancellor of Eng- land - - - - -	Simons - - - - -	Sim. - - - - -	Vol. 14, Part 3.
Vice-Chancellor Wigram Hare - - - - -	Hare - - - - -	Hare - - - - -	Vol. 5, Part 2.
Queen's Bench - - -	Adolphus & Ellis, N. S. - - - - -	Q. B. - - - - -	Vol. 7, Parts 1, 2, 3.
Common Pleas - - -	{ Manning, Grainger, & } { Scott, N. S. - - - - - }	C. B. - - - - -	{ Vol. 2, Parts 4, 5. Vol. 3, Part 1.
Exchequer of Pleas - - -	Meeson and Welsby - - - - -	M. & W. - - - - -	{ Vol. 15, Parts 3, 4. Vol. 16, Part 1.
Practice Court, Queen's Bench, Com. Pleas, and Exchequer - - -	Dowling & Lowndes - - - - -	D. & L. - - - - -	Vol. 4, Parts 1, 2.
Bankruptcy - - - - -	De Gex - - - - -	De Gex. - - - - -	Vol. 1, Part 2.
Nisi Prius - - - - -	{ Carrington & } { Kirwan - - - - - }	Car. & K. - - - - -	Vol. 2, Part 2.
Criminal Law - - - - -	{ Carrington & } { Kirwan - - - - - }	Car. & K. - - - - -	Vol. 2, Part 2.
All the Courts. - - -	Legal Observer - - - - -	L. O. - - - - -	Vols. 33 & 34.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, MAY 1, 1847.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORACE



## THE AMENDED BANKRUPTCY AND INSOLVENCY BILL.\*

THE bill presented by Lord Brougham, to the House of Lords, previous to the Easter recess, has been reprinted with the amendments agreed to in committee. If the measure does not acquire force, it certainly obtains a great accession of bulk as it proceeds, and should it continue to increase in the same proportion, before its arrival at the last parliamentary stage it may be entitled to the distinction of a monster bill.

The amendments introduced in committee are undoubtedly of great substantive importance, and some of them well deserving of serious consideration when a fitting occasion arises. As we have frequently had occasion to observe, an annual revolution in a matter of such universal application as the law of debtor and creditor is itself an evil of considerable magnitude. This branch of the law has now become so complicated and involved, by a multitude of contradictory enactments, that a careful and well-digested consolidation should precede or accompany any further change. Without this, even judicious and well-considered alterations could scarcely be satisfactory or effective. Our readers shall presently have an opportunity of judging for themselves, how far the additions now proposed to be made in the bill are entitled to be called amendments. We intend, however, in the first instance, to direct attention to two of the

proposed enactments, which have very little relation to the subject of bankruptcy and insolvency, and could scarcely be expected to be comprehended in a bill with such a title. The power with which it is intended to invest the judges of the County Courts, to order the arrest of debtors supposed to be about to depart from England, and which formed the subject of some lengthened observations in our number of Saturday last, is conferred by, and explained in, a single clause. It is in these words:—

“Whereas the delay which sometimes takes place in procuring an order from a judge of one of the superior courts to hold a defendant to bail, and in issuing a *capias* thereon, is injurious to creditors; be it enacted, That if a plaintiff in any action in any of her Majesty's superior courts of law at Westminster for the recovery of a debt, or the creditor of any debtor who shall enter into an undertaking immediately to commence such an action, shall by the affidavit of himself or some other person show to the satisfaction of any judge of any of the county courts aforesaid, that he has a cause of action against such defendant or debtor to the amount of 20*l.* or upwards, or has sustained damage to that amount, and that there is probable cause for believing that such defendant or debtor is about to quit England unless he be forthwith apprehended, it shall be lawful for such judge to issue his warrant, directed to such person or persons as he shall think fit, whereby such person or persons shall have authority to arrest any such defendant or debtor named in such warrant, wherever he may be found within the limits of the jurisdiction of such judge, and him safely keep for five days then next, or until such defendant or debtor shall have given a bail bond to the sheriff, or shall have made deposit of the amount of the debt or damages mentioned in such warrant, together with 10*l.* for costs, according to the

\* See notice of Lord Chancellor's new bill for consolidating and amending the Law of Bankruptcy, p. 16, *post*.



present practice of her Majesty's superior courts of law at Westminster when a defendant is in custody upon a writ of *capias*, or until an order for holding such defendant or debtor to bail can be obtained under the provisions of the act 1 & 2 Vict. c. 110, ~~[setting out the title]~~.

It will be observed, that under this provision, the arrest contemplated by a warrant of a judge of the County Court will not justify the detention of the debtor for a longer period than five days: if it is intended that the detention should continue beyond that period, application must be made, as at present, for an order to issue a *capias* from one of the judges of the superior courts. As the order may be had, in general, in the first instance, from a judge of the superior courts as soon as a warrant could be obtained from a judge of the County Court, we venture to think the cases will not be very numerous in which parties will incur the double expense and trouble of an application to a County Court judge, which must be followed before the expiration of five days by a similar application to a judge of the superior courts, more especially, as it cannot be ascertained whether the latter will be satisfied with the same materials which induced the County Court judge to grant his warrant. The clause, it will be perceived, requires that the creditor shall either commence his action in one of the superior courts, or "enter into an undertaking immediately to commence such an action." What is to be the consequence if a creditor enters into such an undertaking and neglects to fulfil it, is not specified, and therefore, we apprehend, the only effect of a breach of the undertaking would be, that the imprisoned debtor might apply for his discharge upon the ground that the creditor had not commenced an action. Before the application could be entertained, however, unless it should be determined without any notice to the creditor, the five days, which the warrant of the judge of the County Court has to run, would expire, and the debtor obtain his discharge upon grounds irrespective of the violated undertaking. The framers of this clause would seem not to have quite made up their minds whether the judges of the County Court should have jurisdiction to authorize an arrest in cases of tort, or in claims for unliquidated damages; or whether the authority to issue a warrant is to be limited to cases where the party applying for the warrant can swear to the existence of an ascertained debt. The parties entitled to apply for a warrant are described as, the

plaintiff in an action for the recovery of a debt, or the creditor of a debtor; but the warrant may issue at the instance of such person, if he can satisfy the judge that he ~~has a cause of action to the amount of 20*l.*, or has sustained damage to that amount.~~ The section is silent as to the destination of the party arrested. He is to be safely kept for five days, or until he shall have given a bail bond, or made deposit, but whether the safe keeping is to be in a gaol, in his own home, or in the house of the officer, is not specified, and, we suppose, is to be left to the discretion of the party to whom the warrant is directed. Upon what terms a debtor so arrested can be allowed an opportunity of entering into a bail bond to the sheriff, if so disposed, is also left altogether to the conscience of the bailiff!

Again, suppose the debtor is desirous to give a bail bond to the sheriff within five days, how is the sheriff to know in what amount he ought to take a bond from a debtor not in his custody, and against whom *he* has no warrant? The section, in its present form, suggests numerous practical difficulties, and abundant opportunity for oppression on the one side, and evasion on the other.

The second provision to which we have referred more immediately interests those gentlemen who have accepted office as judges of the new County Courts, as it secures to them and their successors a life income, and, so far as they are concerned, cannot fail to be considered a very valuable amendment of the act of last session. The section, which is numbered 44, proposes to enact:—

"That from and after the passing of this act it shall be lawful for the Lords Commissioners of her Majesty's treasury, by any order or orders, or minute or minutes, to be by them from time to time made on a petition presented to them for that purpose, to order (if they shall think fit) to be paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland the annuities following; that is to say, an annuity [to the chief and other commissioners of the court for the relief of insolvent debtors] and an annuity or clear yearly sum of money not exceeding pounds to any judge of any county court appointed under the aforesaid act passed in the tenth year of the reign of her present Majesty, or any of his successors in the office of such judge, if and when any such chief commissioner, commissioner, or judge shall be afflicted with permanent infirmity disabling him from the due execution of his office, and shall be desirous of resigning the same; such annuity or clear yearly sum to be paid by equal quarterly payments on the 5th day of January, the 5th

day of April, the 5th day of July, and the 10th day of October in every year, to such chief commissioner, commissioner, or judge, from the period when he shall resign his said office for the term of his life, free from all taxes, except the tax on income."

Now, it may be quite reasonable, and even desirable, that the sixty-four gentlemen who have found favour in the sight of the Lord Chancellor, and received appointments as judges of the County Courts, should in due time be rewarded with retiring pensions. We have always contended for the application of the principle, that the labourer is worthy of his hire, and we do not now recommend a departure from it. But we venture respectfully to suggest, that it is somewhat premature to fix the amount of the retiring pensions of gentlemen, many of whom have not yet had an hour's judicial anxiety, and who have been appointed with the view of testing an experiment the result of which no man can anticipate with perfect confidence. The judges of the new County Courts, under the act 9 & 10 Vict. c. 95, are to be compensated by fees, and not by fixed stipends. No estimate can yet be made of the amount of fees to be received by any one of them, or of the amount of labour and application that may be required in the discharge of their judicial functions. We cannot conceive, therefore, that any satisfactory materials can now exist, or be laid before parliament, to enable a committee of the House of Commons to fill up the blank in the section above printed with the sum to which the retiring pension should be limited. Indeed, there seems no good reason for calling upon the legislature immediately to settle the retiring pensions of judges so recently appointed; although it might have been otherwise, if any one of the judgeships had been conferred on a person likely to "be afflicted with some permanent infirmity disabling him from the due execution of his office," and for whom it was deemed prudent, not to say charitable, to provide. Public feeling and public interest would both be better consulted by refraining from conferring additional jurisdiction, or pledging the country to the payment of pensions to the new judges, until the men and the system they are to administer have been fairly tried.

Our commentary upon the remaining clauses introduced by way of amendment\*

\* The bill, as originally presented, was printed in vol. 33, p. 411, and the amendments introduced in the second bill, in the same volume, p. 446.

must be restricted by considerations of the limited space at our disposal. The following is amongst the alterations which would meet with unqualified approval:—

"That from and after the passing of this act no fee shall be charged by any commissioner of the Court of Bankruptcy or District Courts of Bankruptcy, or by any registrar thereof, or by the said master, for the swearing of any affidavit in any matter in bankruptcy, for the filing of any document in any of the said courts, or for any order made by any commissioner thereof."

The constant transfer of coin from the hands of the suitor to those of the officers of a court of justice, during its public sittings, is, to say the least, unseemly, and ought to be universally abolished.

We also incline to think that the reductions contemplated by the following clauses recently introduced into the bill, might be carried further with advantage to the public, and without materially affecting the efficiency of the officers principally interested. But a better opportunity will probably arise for discussing this matter hereafter.

"That from and after the passing of this act no sum shall be allowed by any commissioner of the Court of Bankruptcy or District Courts of Bankruptcy to any official assignee for the examination of books or accounts, or as or for any extra service whatsoever; and that henceforth every official assignee shall, for his own services, the salaries of his clerks, and for office and warehouse rent, and stationery and office expenses, receive a per-centage on all assets collected and applicable to the purposes of every estate, and no more, such per-centage to be settled by such of the commissioners of the Court of Bankruptcy acting in London, and such of the commissioners of the said court acting in the country, as the Lord Chancellor shall appoint for that purpose, and to be approved by the Lord Chancellor.

"That every official assignee shall, on or before the 1st day of March in every year, if parliament be then sitting, and if not, then within 14 days from the commencement of the then next ensuing session of parliament, lay before parliament a return, made up to the 31st day of December then last, of the total amount of such per-centage received by him during the year ending on that day; and that if the same shall amount to more than the sum of pounds, in the case of an official assignee acting in London, or more than the sum of pounds in the case of an official assignee acting in the country, the surplus shall by them be paid over to the Bank of England, to the credit of the account intitled 'The Secretary of Bankrupts Account;' every such return so laid before parliament to be certified by a commissioner of the Court of

Bankruptcy or District Courts of Bankruptcy, and the payment over of every such surplus to be certified by the Accountant in Bankruptcy.

"That as and when the commissioners and registrars whose offices are abolished by this act shall die, resign, or retire, or be promoted or removed, and as and when the annuities which in virtue of this act, or any other act relating to bankruptcy, may be ordered to be paid, shall fall in and be no longer payable, it shall be lawful for the Lord Chancellor still further to reduce the fees exacted in matters of bankruptcy, and if the per-centage aforesaid shall amount to more than is required for the payment of the official assignees of the sums hereinbefore mentioned, also to reduce the amount of such per-centage."

## CONSTRUCTION OF STATUTES.

### COPYRIGHT IN UNPAID-FOR CONTRIBUTIONS.

In a late case of *Brown v. Cooke*,<sup>b</sup> which was an application by the proprietors of a weekly periodical, called the "London Medical Gazette," for an injunction against the defendant as publisher of the "Medical Times," upon the ground of an alleged infringement of the copyright in certain articles originally published in the "London Medical Gazette," the Vice-Chancellor of England put a construction on the Copyright Act, 5 & 6 Vict. c. 45, which it is desirable should be generally known. By the 18th section it is enacted, that when any publisher or other person shall be the proprietor of any periodical work, and shall employ any person to compose the same, or any articles or portions thereof, and such work, articles, or portions, shall be composed under such employment, on the terms that the copyright therein shall belong to such proprietor, and *paid for* by him, the copyright in every such work, article, and portion so composed and paid for, shall be the property of such proprietor, who shall enjoy the same rights as if he were the actual author thereof, &c.

In the case which formed the subject of application, it appeared that the pirated articles were composed by various persons, whose names were set forth, expressly for the "London Medical Gazette," and that the plaintiff and his partners paid an editor, who communicated with the various contributors. It was quite clear that the plaintiff and his partners did not deal directly with the original composers of the pirated articles, but that they were dealt with by

the editor, and it was not expressly stated that he had paid them for their contributions.

Under those circumstances, the Vice-Chancellor was of opinion that the plaintiff was not entitled to the copyright under the 18th section, as it did not appear that he was the proprietor of a periodical work, who paid for the composition of the articles inserted therein, upon the terms that the copyright should belong to him. Upon these grounds, his Honour refused to interfere by injunction.

## PRACTICE IN THE NEW COUNTY COURTS.

THE decision of Mr. Koe, at the County Court at Hertford, mentioned under this title in our last number,<sup>c</sup> was the subject of a question put by Mr. Bouverie to the Attorney-General, in the House of Commons, on Monday evening last. The Attorney-General expressed a decided opinion that, under the 83rd section, the parties respectively may be examined in support of their own cases, as well as at the instance of the adverse party. This construction of the act is in accordance with what we understand to be the prevailing opinion of the profession, and, no doubt, will be generally acted upon by the judges of the County Courts.

Another case has been mentioned, before Mr. Gale, the judge of the Hampshire district, where it happened, as there is too much reason to fear it frequently will in those courts, that the plaintiff swore positively to the existence of a debt which the defendant as positively denied. The learned judge thought, that under those circumstances, he was bound to decide against the plaintiff, on the principle, that the burden lay in every case upon the plaintiff to substantiate his claim, and that in this instance he had failed to do so, inasmuch as his testimony was contradicted. We have no reason whatever to doubt that justice was done in the particular case referred to, but we question the soundness of the doctrine, if meant to be laid down as a general rule, that where the plaintiff relies on his own testimony, and is contradicted by the defendant, the latter must prevail. It is holding out a premium to an unscrupulous defendant, and it will soon be seen how many will avail themselves of it! Where

<sup>b</sup> 16 Law J. 140. Chancery C.

<sup>c</sup> Vol. 33, p. 579.

the plaintiff and defendant are the only witnesses, and their evidence conflicts, the same principle applies as when any other witnesses contradict each other in a matter of fact. The judge is bound to do, as juries are constantly directed,—to weigh all the circumstances,—to examine into surrounding events,—to see if one statement may not be corroborated by collateral facts, whilst the other remains unsupported,—to consider even the probabilities of the adverse declarations, and not wholly to exclude the influence founded on an estimate of the character, temper, and demeanour of the witnesses, as disclosed by their examination. In short, the judge of a County Court, in our humble opinion, is bound, in every case in which he is not assisted by a jury, to determine, according to the best of his judgment, which of the parties is most entitled to credit. No doubt, the singular and isolated case may occur of a contradiction in fact, where the weight of testimony is so nicely balanced, that there is no consideration which ought to incline the scale to the one side or the other, and in such a case, and such a case only, as it seems to us, the principle said to be adopted by Mr. Gale should prevail.

As might have been expected, a majority of the new judges have taken an early opportunity of announcing their determination not to allow unqualified persons to represent parties in the new courts. According to the newspaper reports, however, Mr. Heath, the judge of the Bloomsbury Court, intimated a disposition to allow the clerks of attorneys to practise before him, provided they brought with them letters from their principals, giving authority to act. We are quite sensible that it would be a great convenience to many attorneys, if their clerks might appear for them in the Small Debts Courts. We are apprehensive, however, that if the permission were granted upon the production of a written authority, it would open a wide door to irregularity and abuse. Persons might assume the character of clerks for the occasion who did not really stand in that relation, and authority might be obtained from an attorney, having no knowledge of, and a very subordinate interest in, the suit. If there should be any extension of the rule, it might, for the present, be limited to gentlemen under articles. There is a simple and ready means of ascertaining whether any person assuming the position of an articulated clerk is entitled to the character; and, moreover, the articulated clerk

is practically subject to judicial authority in nearly as great a degree as the attorney. If a distinction of this kind were established, it is hoped it would not be deemed invidious by the more numerous body of clerks who have not entered into articles, and whose general ability and trustworthiness are not always, perhaps, sufficiently appreciated.

## LAW OF WILLS.

### DEVISE TO THE SUBSEQUENT WIFE OF A WITNESS.

AFTER the 1st of January, 1838, *A. B.* makes his will, and thereby devises certain real estate to an unmarried daughter in fee, such will being attested by two persons who were then perfectly disinterested. Soon afterwards he made a codicil, but which did not affect the above-mentioned devise, and confirmed the will, except as thereby altered. The codicil was attested by one of the witnesses to the will, the other witness being a fresh one, but also a disinterested party; and the testator shortly afterwards died.

*Subsequently* to the date of the codicil, but before the death of the testator, the daughter marries one of the witnesses to the will; and it is contended, that the devise to her, she being now the wife of an attesting witness, is void under the 15th sect. of 7 W. 4, and 1 Vict. c. 26. But it must be borne in mind that she was not, at the date of the will, nor until after that of the codicil, married to the witness. But, admitting that a question may arise, taking the will by itself, is not the defect (if one) cured by the codicil, to which the now husband was not a witness, as it is enacted by sect. 34, "*that every will re-executed, or republished, or revived by any codicil, shall, for the purposes of this act, be deemed to have been made at the time at which the same shall be so re-executed, republished, or revived.*" But the 24th section of the same act enacts, "*That every will shall be construed with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator,*" at which time the daughter was married.

Will not the will and codicil, under the 34th section, be construed to be but one instrument, and the devise be good, in consequence of the codicil not being attested by the devisee's subsequent husband? or, is the devise bad under the 24th section, in consequence of the daughter being married previous to the death of the testator?

W. H. B.

[Some of our readers can probably refer to a case on this subject.—ED.]

## PRACTICE AT THE JUDGES' CHAMBERS.

*Woods v. Speller.* 21st April, 1847.

THIS was a summons to stay proceedings on payment of debt and costs. The action was brought on a bill of exchange, and concurrently with the action the defendant was served with a notice in bankruptcy under the 5 & 6 Vict. c. 122, s. 14, and the question upon the summons was, whether the defendant was liable to the costs of the proceeding in bankruptcy.

The plaintiff relied upon his right to proceed in bankruptcy as well as at law, and hence his equitable title to the costs of the latter as an auxiliary proceeding which a judge would recognize in refusing to stay the proceedings on such an application, unless on payment of those costs.

The defendant contended, that as the act had not provided for the costs of the proceeding in bankruptcy, which was distinct from the action at law, and unconnected with it, there was no power in the judge to order the payment.

Mr. Baron *Alderson* reserved his judgment, and after consultation with Mr. Justice *Coleridge*, ruled that, inasmuch as the law had provided two distinct remedies, the plaintiff had a clear right to proceed on both, and if he did so with reasonable and probable grounds, he should in fairness be allowed his costs of both proceedings; and his lordship therefore refused to make the order, unless the defendant consented to pay the costs of the proceeding in bankruptcy.

Order drawn up accordingly.

*Rhodes and Lane* attorneys for the plaintiff.  
*Bartley and Southwood* for the defendant.

## QUESTIONS AT THE EXAMINATION.

*Easter Term, 1847.*

### I. PRELIMINARY.

Where, and with whom did you serve your clerkship?

State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

Mention some of the principal law books which you have read and studied.

Have you attended any and what law lectures?

### II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

State some of the principal kinds or forms of action at common law.

What is the meaning of a local and a transitory action? What actions are local and what transitory?

What promise to pay the debt of another will be sufficient to found an action upon?

If the acceptor of a bill of exchange refuse payment of it when due, is any and what step necessary before you can sue the drawer or indorser?

Should the period within which an action on a simple contract debt can be brought have expired, and the defendant should plead the Statute of Limitations, will a verbal promise, given within the limited time, be sufficient to enable the plaintiff to recover, or must he be prepared with any and what further evidence?

If several defendants are partners in trade, is it necessary to serve each with a copy of the writ of summons?

If the defendant keep out of the way to avoid personal service of a writ of summons, are there any and what means by which to compel an appearance?

Within what time after service of a writ of summons is it necessary to indorse on such writ the day of the week and month of such service? If such indorsement be omitted, what is the consequence to the plaintiff?

When it is now sought to arrest or detain a defendant under the provisions of the act for the abolition of arrest on *mesne* process, what is essentially necessary to be stated in the affidavit?

In what cases must the declaration be filed, and in what cases must it be delivered?

Writ served in any term or vacation, within what time should the plaintiff declare to prevent judgment of *non pros.*?

Where a defendant is advised to plead more than one plea, what steps must he take?

If you are in possession of a document which you intend to produce at the trial, should you be justified in incurring the expense of taking a witness to prove it? or is there any other way of avoiding the expense?

In what case is a registration of judgment necessary? and what advantages attend the doing so? and for different purposes, how should the same be registered?

After what time must a judgment be revived, and by what process?

### III. CONVEYANCING.

State the different denominations of estates in land in point of tenure and of duration?

What words will create or pass a fee simple estate in a will or a deed respectively? And as to a will, what difference in this respect is made by the recent statute for the Amendment of the Law as to Wills? And what are the requisites to the executing a will since that statute?

Describe generally the nature of copyholds, and how conveyed *inter vivos*. The like as to customary freeholds.

What are the rules of descent as to fee simple estates, both freehold and copyhold?

What is the date of the Statute of Uses, and what its principal enactments?

What is the nature of the conveyance by lease and release, feoffment, and bargain and sale enrolled, respectively?

Who is the protector of a settlement made since the Statute for the Abolition of Fines and Recoveries took effect, and who of a settlement made before that period?

What description of instrument is now necessary for the disentailing of lands, and within

what period must it be enrolled, and where? And is any reference to the statute, or to the purpose for which the deed is made, necessary in a disentailing assurance?

How does a married woman convey her estate in freeholds since that statute, and what are the requisites? Does the statute apply to the equitable as well as legal estate of a married woman, or to leaseholds for years?

What are the requisites of a deed, and what further should be attended to on the execution of a power by deed or other writing?

What deeds or instruments respecting land in Middlesex require registration under the statute, and what are excepted?

What was the form of conveyance of freeholds of inheritance to prevent the attachment of the purchaser's wife's dower before the statute of William the Fourth? Is it now ever necessary, and in what cases?

What created the necessity of the estate, formerly limited to trustees, to preserve contingent remainders? Are such estates now unnecessary, and why?

Can a husband convey his wife's reversionary leaseholds for years with or without his wife, or her reversionary portion payable out of land, freehold, or leasehold for years, and how?

What is the effect of the Statute of Mortmain?

#### IV. EQUITY AND PRACTICE OF THE COURTS.

A person conveys his estates to trustees upon trust to sell and apply the proceeds of the sale in discharge of all his bond debts, and the interest then due, and to grow due thereon, up to the day of payment. Upon taking the account, it is found that the principal and interest upon some of them exceed the penalty of the bonds. In this case are the obligees entitled to the excess? If not, state the reason why.

Where a legacy is charged on real and personal estates, and the legatee dies before the day of payment, how is this legacy treated?

From what time does the interest of a legacy, given by a parent to a child, commence?

If an annuitant under a will dies before the day of payment, is any portion of the annuity payable in that case? and under what authority?

What responsibility does a mortgagee incur by entering into the possession of lands mortgaged to him?

In what order are the assets of a testator applied in payment of his debts?

What is the effect of the Statute of Limitations on a legacy or annuity?

If a feme covert have rights opposed to those claimed by her husband, and which she wishes to enforce, how must she proceed to do so?

Where husband and wife are defendants to a suit, how does the death of the husband affect the suit?

In what case is the answer of a defendant evidence for himself?

What is the object of a plea?

When it is apprehended a defendant is likely

to abscond without answering, what mode of proceeding is to be adopted in such a case?

State the object of a bill to perpetuate the testimony of witnesses?

What is the intention of a show-cause warrant usually taken out before the master prepares his report? and when must it be taken out?

What is the effect of enrolling a decree?

#### V. BANKRUPTCY AND PRACTICE OF THE COURTS.

What are the preliminary inquiries which the solicitor ought to make before he can be sure that, if a fiat be issued against a person whom it is wished to make a bankrupt, it can be supported?

What are the different steps to be taken under the fiat up to the time of the adjudication.

Enumerate the different acts of bankruptcy.

What course can an intended bankrupt take if he wishes to dispute the bankruptcy?

Can a trader get himself made a bankrupt, and what course must he pursue with that object?

What is the usual course of proceeding at the second meeting under the fiat?

Can you give any examples of debts not due at the time which may be good petitioning creditors' debts? Can you give any examples of equitable debts which may be good petitioning debts?

If a creditor who holds security wishes to prove his debt, what course must he take to entitle himself to prove? Must he take the same course if he holds bills of exchange as security?

What is meant by fraudulent preference?

Does the certificate of conformity discharge the bankrupt from *all* liability? If not, what is the nature of the claims for which he may continue liable, notwithstanding his certificate?

Under what circumstances may the property of a third party become distributable under a fiat against a trader?

Have assignees the unlimited power to bring actions and suits, and to refer to arbitration or compromise? If not, what is required to authorize an action being brought, what to authorize a suit, arbitration, or compromise?

If an action be brought by assignees against any third party, can such third party dispute the bankruptcy, and in what manner? and if disputed, what must the assignees prove as to the bankruptcy?

If a bankrupt be a lessee under a lease for years, what course must the assignees pursue as to either adopting or disclaiming the lease? And if the assignees do not adopt the lease, what right has the bankrupt as to the lease?

What is the mode of appealing from the decision of a commissioner, and to whom does the appeal lie? and to what higher tribunal is there any further appeal? And under what circumstances?

#### VI. CRIMINAL LAW AND PROCEEDINGS BEFORE MAGISTRATES.

Give the legal definitions of the crimes of

murder, manslaughter, burglary, housebreaking, riot, and conspiracy.

Under what age is an infant considered in law *absolutely* incapable of committing felony, and up to what age is he *presumed* to be so incapable?

What is the meaning of a principal in the first and in the second degree? and of accessories before and after the fact? Can there be accessories in any other offence than felony?

If goods are stolen in one county and carried by the thief into another, in which county may he be indicted?

Where goods of a person who has died intestate are stolen, in whom should the property be laid, and is there any and what distinction in that respect whether the property be stolen before or after the granting of letters of administration?

Upon what principle are the dying declarations of a murdered person received in evidence, and subject to what limitation?

What is the nature of an inducement which will render the confession of a prisoner inadmissible in evidence against him?

In what cases is it necessary that an offence should be proved by more than one witness?

On an indictment for felony, what is the effect of a previous conviction for felony? In what manner and at what period of the trial must such previous conviction be proved?

In what cases is a defendant in an indictment found at the assizes or sessions entitled to traverse such indictment, and to what period in either case?

Where several persons are indicted for a joint misdemeanour, and one or more desire to take their trials immediately and others to traverse, what is the practice with respect to the time of trial?

Under what circumstance can an order of justices be procured for the removal of a pauper from one parish to another?

Can a wife residing with her husband in a parish be separately removed from thence in any case?

At what sessions must an appeal against a poor-law order of removal be preferred and tried?

What constitutes such a residence in a parish as will confer a settlement there?

## ADMISSION OF SOLICITORS.

THE Master of the Rolls has appointed Wednesday, May 5th, at the Rolls Court, Chancery Lane, at a quarter past three in the afternoon, for swearing solicitors.

Every person desirous of being sworn on the above day must leave his Common Law Admission or his Certificate of Practice for the current year at the Secretary's Office, Rolls Yard, Chancery Lane, on or before Tuesday, May 4.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### Law of Attorneys.

#### ADMISSION IN INFERIOR COURT.

*Roll of the court.*—The Lord Mayor's Court in London is an inferior court within the meaning of the 6 & 7 Vict. c. 73, ss. 2 & 27, and therefore an attorney of any of the superior courts may claim to be admitted as an attorney of that court, on signing the roll thereof. The fact that the Lord Mayor's Court has no roll does not exempt it from the operations of the statute.

The obligation to have a roll is, under the 6 & 7 Vict. c. 73, s. 2, imperative on all the inferior courts of the kingdom. *The Queen v. The Mayor and Corporation of the City of London*, 33 L. O. 502.

And see *Articled Clerk*.

#### ARTICLED CLERK.

1. *A barrister cannot qualify as such.*—A person who has served an attorney under articles of clerkship, being at the same time a barrister, cannot claim to be admitted an attorney in virtue of such service, although he has been disbarred before making the application. *Bateman, ex parte*, 6 Q. B. 853.

Case cited in the judgment: *Ex parte Cole*, 1 Doug. 114.

2. *Notice.*—When a party had given regular notices of his intention to apply to be admitted as an attorney on the first day of Hilary Term, and it appeared that on the second day of Michaelmas Term an offer of partnership from the London agents of the firm to which he was articled had been made, provided he could get admitted by the last day of that term, the court, on motion, on the fourth day of Michaelmas Term, ordered, that on his giving fresh notices referring to the former notices and the present rule, he should be examined, and if of ability, admitted the last day of that term. *Cuncliffe, ex parte*, 3 D. & L. 348.

#### ATTACHMENT.

See *Taxation*, 2.

#### BILL OF COSTS.

It is not necessary that an attorney's bill should be entitled in a cause or court, if from the bill taken altogether, it can be reasonably ascertained in what court and cause the business has been transacted. *Martindale v. Falkner*, 3 D. & L. 600.

Cases cited in the judgment: *Lewis v. Primrose*, 6 Q. B. 265; *Jones v. Randall*, 1 Cowp. 37; *Frowd v. Stillard*, 4 C. & P. 51.

See *Signed Bill*.

#### GUARDIAN.

32nd Order, 1845.—The court will not appoint the solicitor of the wife guardian for her husband under this order; nor give any direc-



tions for his being employed as the solicitor for the husband. *Biddulph v. Lord Conroys*, 32 L. O. 372.

#### INFERIOR COURT.

See *Admission*.

#### LIEN.

*Production of documents*.—One of two defendants, who, by their answer, admitted that documents were in their possession, having, with his partner, as solicitors, a lien on those documents for costs, the court declined to order the defendants to pay those costs in order to facilitate the production of the documents. *Wroughton v. Barclay*, 33 L. O. 477.

#### JURISDICTION.

See *Taxation*, 6.

#### NEGLIGENCE OF SOLICITOR.

A bill will not be allowed to be amended after great delay, on the ground that the delay was owing to the negligence of the solicitor, and the plaintiff had in consequence changed his solicitor. *Clarke v. Mayor, &c., of Derby*, 33 L. O. 165.

#### NOTICE OF ADMISSION.

See *Articled Clerk*, 2.

#### PAYMENT TO SOLICITOR.

The sum of 69*l.* stock and 8*l.* cash stood to the account of a certain party who was resident abroad; and on an application on his behalf, the money was paid to his solicitor, the solicitor and another undertaking that the same should be properly applied. *Armstrong v. Stocken*, 33 L. O. 405.

#### PRIVILEGED COMMUNICATION.

See *Production of Documents*.

#### PRODUCTION OF DOCUMENTS.

*Professional confidence*.—A solicitor cannot refuse to produce papers to a party originally interested in them, on the ground of the professional confidence subsisting between himself and a third party also interested in those papers.

A letter written to a solicitor inclosing another letter which the writer requests the solicitor to send in his own name to a third party is not protected by the professional confidence subsisting between the solicitor and the writer. *Reynell v. Spry*, 33 L. O. 210.

And see *Lien*.

#### RETAINER.

See *Taxation*, 10.

#### ROLL OF ATTORNEYS.

See *Admission*.

#### SHERIFF'S COURT.

*Attorney.—Witness*.—Where an attorney conducts a civil cause at a trial before the undersheriff, as advocate, and makes a speech to the jury on behalf of his client, he cannot give evidence in the cause, and if he does, the court will grant a new trial. *Stones v. Biron*, 33 L. O. 141.

#### SIGNED BILL OF COSTS.

Under the Solicitors' Act, (6 & 7 Vict. c. 73,) the client may obtain an order for the taxation of a solicitor's bill which has been delivered without signature, &c.

In general, it is an objection to an order of course for taxation, that it contains a direction, on payment of the bill which the order itself directs to be taxed, to give up more papers than the solicitor is bound to give up. But, under the peculiar circumstances of this case, such an order was held not irregular. *Pender, in re*, 8 Beav. 299.

#### STRIKING OFF THE ROLL.

The court will entertain an application to strike an attorney off the roll for alleged professional misconduct, although the facts adduced in support of the charge disclose evidence sufficient to sustain an indictment. *In re* ———, 33 L. O. 141.

#### TAXATION.

1. *Agreement to pay costs*.—A person liable to pay a solicitor's bill under a general agreement to pay all the costs of a certain transaction, may have the bill taxed under a common order. Principle on which taxation must be conducted where the solicitor was not employed by the person applying to tax the bill. *In re Wallace*, 33 L. O. 112.

2. *Attachment*.—Where an attorney obtains an order for the taxation of his bill of costs, under the 6 & 7 Vict. c. 73, s. 43, he cannot proceed by attachment without first obtaining an order for payment of the amount certified to be due. *Woodhouse, in re*, 2 C. B. 290.

3. *Disability of outlaw to tax*.—An outlaw cannot, for his own benefit, move to have his attorney's bill taxed.

No held, where the outlaw was administrator, with the will annexed, by which all the personal estate was bequeathed to him, subject to payment of the debts, &c., and one of the bills which he sought to tax related to business done for himself and the testatrix jointly, and the other to business done for the testatrix alone. *Munder, in re*, 6 Q. B. 867.

4. *Irregularity*.—A solicitor was employed by two persons, *A* and *B*. An order of course for taxation was obtained by *A* alone, on the allegation that the solicitor was employed by *A*. It was discharged for irregularity. *Perkins, in re*, 8 Beav. 241.

5. *Joint liability*.—Where three parties are jointly liable to a bill of costs, and a judgment is obtained for the amount in an action against one, the other two are not precluded by such judgment from obtaining an order to tax. *In re Hare*, 33 L. O. 550.

6. *Jurisdiction.—Costs*.—To obtain the taxation of a bill of costs after payment, the petitioner must allege and prove specific items of overcharge, even if the payment has been made under protest and upon pressure. Upon a petition for taxation, the court has no jurisdiction to determine the construction of a disputed special contract as to the costs.

The court, though it refuses the prayer of a



petition for taxation, does not always give the costs. *Thompson, in re*, 8 Beav. 237.

7. *Lower Scale*.—*Directions to the officers*.—In an action for damages necessarily unliquidated, the costs cannot be taxed on the lower scale given by the directions to the taxing officers, Trinity Term, 7 Vict., though the plaintiff, at the sittings or assizes, recover less than 20*l*. *Walther v. Moss*, 7 Q. B. 189.

8. *Order of course*.—*Third party*.—Under ordinary circumstances, an order for taxation may be obtained as of course by third parties "liable to pay." *Bracey, in re*, 8 Beav. 338.

9. *Payment under protest*.—Payment of a bill of costs under protest, or the circumstance of there being overcharges, is not alone sufficient to induce the court to order a taxation after payment; nor is it a sufficient ground that the bill contains charges which would not be allowed between a mortgagor and mortgagee, if they are proper charges as against the mortgagee. *In re Harrison*, 33 L. O. 404.

10. *Retainer*.—*Order of course*.—*Costs*.—In equity the client, in prosecuting the common order for taxation, may object, on the ground of want of retainer, to any items of the bill, except those as to which he has admitted the retainer by his petition. The practice is different at law.

A party applying for a special order for taxation, in a case in which he might have obtained the common order, must pay the costs, though he succeeds. *Bracey, in re*, 8 Beav. 266.

Case cited in the judgment: *Rigby v. Edwards*, in *Beames on Costs*, p. 382, (1st ed.), and 255, (2nd edit.)

11. *Retrospective effect of Solicitors' Act*.—The jurisdiction as to taxation given by the Solicitors' Act, extends only to the ascertainment by the ordinary rules of practice, of the *quantum* payable by one party to the other. It does not authorize the court to determine whether a special agreement exists as to the mode of taxation, or the manner in which the costs, charges, and expenses are to be settled and paid.

Retrospective operation of the Solicitors' Act to make taxable bills not previously liable to taxation, incurred before, but remaining unsettled at, the time of the passing of the act. *Rhodes, in re*, 8 Beav. 224.

12. *Undertaking*.—An attorney, on being retained to conduct a cause, gave his client, the following undertaking:—"Should the damages or costs not be recoverable in an action, I shall charge you costs out of purse only." The plaintiff obtained a verdict, with damages and costs, but the defendant obtained his discharge under the Insolvent Debtors' Act, and the plaintiff only received a dividend of about 7*s*. in the pound on the amount of his judgment: *Held*, that the attorney was not, under these circumstances, limited by his undertaking to costs out of pocket only.

The Master having taxed the attorney's bill, allowing him costs out of pocket only, a summons was taken out and heard before a judge at chambers, who directed the taxation to be

for costs out of pocket. Subsequently, another summons to review the taxation was taken out, and heard before the same judge, who dismissed it: *Held*, that the attorney had a right to appeal from this decision to the court. *Stretton, in re*, 14 M. & W. 806; S. C. 31 L. O. 150; 32 L. O. 226; 3 D. & L. 278.

#### UNDERTAKING.

1. Where an attorney arranged terms for the settlement of an action, and in pursuance thereof drew up a promissory note for the amount of the debt and costs, which the defendant signed, and also gave his own undertaking to guarantee the payment of the note with interest: *Held*, that this was an undertaking given in his character of attorney, although he was not the attorney in the action, and it was sworn by him that he was not acting as attorney for the defendant, and that he had not made any charge, or been paid anything for his services. *Fairthorne, in re*, 3 D. & L. 548.

Case cited in the judgment: *In re Gee*, 2 D. & L. 997.

2. It is no objection to a rule calling on an attorney to pay a sum of money pursuant to his undertaking, that nearly three years have elapsed since it was given; repeated applications for payment having been made from time to time up to a recent period. *Titterton v. Sheppard*, 3 D. & L. 775.

And see *Taxation*, 12.

#### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

##### Lord Chancellor.

*Lewis v. Hinton*. March 26th, 1847.

##### VACATING INROLMENT OF DECREE.

*The proper course to prevent the inrolment of a decree is to enter a caveat; in the absence of which the inrolment will not be vacated upon the grounds of concealment, surprise, and undue haste.*

Mr. J. Parker, with whom was Mr. Bird, applied on behalf of the defendant to vacate the inrolment of a decree made by the Vice-Chancellor of England, on the 27th of Feb. last, and remarked that this was an original application, as his lordship alone possessed the necessary jurisdiction. As soon as the decree was made out, to facilitate which the plaintiff had borrowed the defendant's briefs, the former procured it to be inrolled, although aware that the latter intended to appeal to his lordship. The defendant, after his brief had been returned, lost no time in presenting a petition for a rehearing, and then for the first time ascertained that the decree had been enrolled. Under these circumstances, it was submitted that the inrolment would be vacated. *Stevens v. Guppy*, Turn. & Russ. 178; *Wright v. Wright*, reported as *Anon.* 1 Ves. (sen.) 325.

Mr. *Rolt* and Mr. *Glasse* contended, that the grounds suggested were not sufficient to support the application. The plaintiff had acted according to practice, and had not misled the defendant by any communication. They cited *Balguy v. Chorley*, 1 Mil. & K. 640; *Wardle v. Carter*, 1 Myl. & K. 283; *Barnes v. Wilson*, 1 Russ. & Myl. 486; *Dearman v. Wych*, 4 Myl. & Cr. 550.

The Lord Chancellor, after hearing Mr. *Parker's* reply, said, The principle is, that each party is justified in using dispatch to procure enrolment of a decree. It is open to the other party to enter a *caveat*. Each has a regular course of proceeding. In many cases the *caveat* is not entered; but if anything passes which induces the party not to enter it, the court will not permit the enrolment to stand. Nothing took place here but a knowledge of an intention to appeal, and the fact of borrowing briefs to forward an object common to both parties. The plaintiff's solicitor said nothing of his intention to enrol the decree; indeed, if he had he would have defeated his client's interest. The adverse party cannot, therefore, say that he was misled; consequently, there are no grounds for vacating the enrolment, and the application must be refused.

#### Rolls Court.

*Edge v. Duke.* Jan. 28th, 1847.

#### AMENDMENT OF BILL.—ORDER OF COURSE.

*An order to amend which the plaintiff is entitled to obtain as of course, is considered as an order of course, though made on a special motion; and a second order to amend obtained as of course after the making of such an order is irregular.*

*The Master of the Rolls will not order amendments made under an irregular order to amend, to be taken off the file, if the cause is not at the Rolls.*

THIS was a motion to discharge, for irregularity, an order to amend, obtained as of course, with costs, and to take the amendments off the file. The alleged irregularity was, that the plaintiff had previously obtained an order to amend, and therefore could not obtain a second order to amend as of course. The facts of the case were as follow:—An injunction had been obtained in the cause, which the defendants made a motion before the Vice-Chancellor *Wigram*, in July last, to dissolve. A cross motion was made by the plaintiff for leave to amend, without prejudice to the injunction. His Honour dissolved the injunction, but gave the plaintiff leave to amend generally. The defendants appealed to the Lord Chancellor for his Honour's judgment, but unsuccessfully, and pending the appeal, the order to amend dropped. They afterwards obtained as of course, and acted upon the order complained of, and now contended that the order made by the Vice-Chancellor *Wigram* was not an order of course, inasmuch as it was made upon a special motion after notice, and therefore, that

the order to amend which the present motion sought to discharge was in fact the first order which had been obtained as of course, and consequently was regular.

Mr. *Bigg* for the motion.

Mr. *Turner* and Mr. *Heathfield* contra.

Lord *Langdale* said, that he thought the order was irregular; for although the motion upon which the order was made was a special one, the Vice-Chancellor had refused it, so far as any thing special was asked, and made only the order which the parties had a right to obtain as of course, and which, therefore, must be treated as an order of course. Then the obtaining a second order as of course was irregular. The parties should have asked specially for an enlargement of the time limited for amending, by the first order. The order must be discharged with costs, except in so far as the motion sought to have the amendment taken off the file, as to which he had no jurisdiction, the case being before the Vice-Chancellor *Wigram*.

#### Queen's Bench.

(Before the Four Judges.)

*Hunter v. Caldwell.* Hilary Term, 1847.

#### ATTORNEY.—FILING RETURN OF WRIT.— NEGLIGENCE.

*Under the 2 W. 4, c. 39, s. 10, which says, that the writs therein mentioned "shall be returned non est inventus, and entered of record," an attorney is bound to make the return of non est inventus, and to bring the writ, with such return, to the proper officer of the court to be by him filed of record. The word "returned" in the statute includes filing so far as an attorney can file a writ.*

*In an action against an attorney for negligence, the declaration alleged, "that the defendant did not nor would file the said writs." Held, that if there was any sense of the word file in which an attorney could be liable to perform that duty, the declaration would after verdict be good; that in this case there was such a sense of that word, as he was bound to bring the writ to the proper officer in order to be filed of record. The judge having received evidence of what was the practice in this respect, directed the jurors, that the omitting to act in accordance with an established practice was negligence, and he left it to them to say whether that practice had been so well understood that the plaintiff had been guilty of gross negligence. Held, no misdirection.*

THIS was an action on the case for negligence, brought against an attorney for omitting to file certain writs in compliance with the 2 W. 4, c. 39, s. 10, to prevent the operation of the Statute of Limitations, by reason of which omission the plaintiff was deprived of the proceeds of a judgment obtained against one *Hicks*. The case has been twice tried, and a verdict given for the plaintiff on each trial. A new trial on the former occasion was granted on

the ground of misdirection with respect to the question of negligence.\* The last trial was before *Coleridge, J.*, in Middlesex. The declaration alleged the retainer of the defendant by the plaintiff; that it became the duty of the defendant to exercise proper care and diligence, &c.; but that the defendant did not nor would file the said writs with the said officer according to the practice of the court, by reason of which conduct the proceedings became void and of no effect. Evidence as to the practice of the court was given that it was the duty of an attorney to bring the writs to the proper officer, and then it was the duty of the officer to enter them of record. The defendant had neglected to bring the last two writs to the office within the time prescribed by the act of parliament, so that they might be entered of record. The learned judge told the jurors, that in order to find a verdict for the plaintiff they must be satisfied that the defendant had been guilty of gross negligence; and that in his opinion the act of filing, although not mentioned in the statute, was included in the words "returned *non est inventus*;" and it was for the jury to say whether the practice was so well understood that the defendant had been guilty of gross negligence in omitting to bring in the writs so that the proper officer might make the return and enter them of record. A rule *nisi* had been obtained either to correct the judgment on the ground of the insufficiency of the declaration, or for a new trial on the ground of misdirection.

Mr. Crowder, Mr. Watson, and Mr. Bull, appeared in support of the verdict. The ruling of the learned judge is correct. The word filing only means bringing the writs to the proper office in order that full effect may be given to them. The filing a declaration or the filing an affidavit are terms in constant use, and merely mean bringing them to the proper office.

Mr. Knowles and Mr. Rawlinson contra. Filing these writs is not necessary for barring the Statute of Limitations. Full effect would be given to this statute by returning *non est inventus* and entering the writs and return of record. *Hunt v. Coxe*,<sup>b</sup> *Harris v. Woolford*,<sup>c</sup> *Taylor v. Hipkins*.<sup>d</sup> But assuming that filing is necessary, then, upon the authority of numerous cases, the learned judge should have told the jury that this was a matter of such doubt and ambiguity as to negative anything like gross negligence. *Baikie v. Chandless*,<sup>e</sup> *Bulmer v. Gilman*,<sup>f</sup> *Elkington v. Holland*.<sup>g</sup> And without gross negligence such an action as the present is not maintainable. *Purves v. Landell*.<sup>h</sup>

Lord Denman, C. J., now delivered judg-

ment. After stating the facts of the case and the pleadings, his lordship said:—The learned judge is alleged to have been wrong in holding that filing the return was necessary by the statute, or that it was included in the word return used in the section, and in leaving the question of negligence to the jury when the jury ought to have been directed by him on the question of negligence as on a matter of law. There are two things required by the statute to be performed within a limited time,—the return of *non est inventus*, and the filing that return of record. This latter act is to be done by the officer of the court, but as his duty is limited to entering such returns as are brought to him, the duty to bring them is that of the attorney. Since the passing of the statute the whole object of suing out the writ and indorsing the date upon it will be defeated, unless the writ is in due time returned into the office. The attorney has the custody of the writ, and knows the time when this is to be done. A negligence to do what was necessary to keep alive the suit was in this case especially wrong, since the particular object of his being retained was that he might do what was necessary to keep alive the right of action. Then it is objected that the learned judge treated filing as included under the word return. But the declaration says, "filing according to the necessary and proper practice of the court." The judge told the jury that filing would be the act of bringing the return to the officer, and in that sense it was part of the attorney's duty to file the writ. We do not see any objection to that direction, and are of opinion that the duty of bringing it to the office for the purpose of filing may be included under the word "return." Merely writing the words *non est inventus* is not sufficient. The writ ought to be delivered to the proper officer. The attorney must do that which would be sufficient to warrant the issue of another writ. It was not contended that filing was the duty of the attorney in any other sense than this. The other kind of filing is part of the duty of the officer. Then as to the alleged misdirection—the question of negligence or no negligence was a question of fact for the jury, though, like many others which turn on matters of law, it was necessary to direct the jury properly upon it. The judge was to say what was the sort of negligence for which an attorney was responsible. Having done that, he was right in leaving it to the jurors to say whether the attorney had performed his duty, and whether, in the case of non-performance of it, that non-performance was culpable or venial in the sense in which it would or would not sustain this action. The learned judge has done this, and as to the manner in which he may have done it, we think that nineteen days delay, when the attorney was specially retained to keep the action alive would warrant the judge in making strong remarks.

It is said that the judgment ought to be arrested, because it is not the duty of an attorney to file a writ. But we think that if there is any sense of the word filing in which he can be said

\* See a report of this case, 29 Legal Observer, p. 89.

<sup>b</sup> 2 Burr. 1360. <sup>c</sup> 6 T. R. 617.

<sup>d</sup> 6 Barn. & Ald. 489. <sup>e</sup> 3 Camp. 17.

<sup>f</sup> 4 Man. & Gran. 108. <sup>g</sup> 9 M. & W. 659.

<sup>h</sup> 12 Clark & Finnelly, 91, and the cases there cited and affirmed.

to be liable to file it, that is sufficient after verdict. We think that there is such a sense of that word, and therefore that the judgment must be for the plaintiff. Rule discharged.

**Queen's Bench Practice Court.**

(Before Mr. Justice Coleridge.)

*Ex parte John Unwin.* Saturday, April, 24, 1847.

ARTICLED CLERK. — SERVICE AND INROLMENT.

*Where in September, 1843, a party was articulated to an attorney, who neglected to have such articles duly inrolled, but at the time of the execution handed them over to the clerk to keep them safely, and never afterwards took any measures to get them inrolled; and it was sworn by the clerk that he was ignorant of the necessity of such inrolment, and thought everything necessary had been done until November last, and had since made ineffectual attempts to induce his master to get the articles inrolled, and was treated with personal violence by him; the court granted the clerk permission to inrol the articles himself, and directed that the service of such clerk (three years and a-half) should be computed from the date of his articles, and also granted a rule calling upon the attorney to show cause why the clerk should not be discharged from his articles, and why it should not be referred to the Master to report what part of the premium should be returned.*

THIS was an application on behalf of an articulated clerk, that the period of his service may be reckoned from the time when he entered into his articles, and that he may be permitted now to inrol such articles, also that the attorney to whom he was articulated may show cause why the applicant should not be discharged from his articles, or assigned to some other attorney, and why it should not be referred to the Master to report what part of the premium should be returned. It appeared from the affidavit of the articulated clerk, that on the 30th of September, 1843, he articulated himself to an attorney of this court, and paid him a premium of 200*l.*, it being also stipulated that he was to have an annual salary; that at the time of executing the articles the attorney handed them over to the clerk, with directions to keep them safely, and never afterwards took any steps to get them inrolled, pursuant to the 6 & 7 Vict. c. 73, s. 8. It was sworn by the clerk that he remained in entire ignorance of the necessity for inrolment, and considered that everything necessary had been done, until November last, when, for the first time, he became acquainted with the legal necessity of inrolling the articles. It further appeared, that on his applying to his master on the subject, he desired him to apply to his friends for money for the purpose, but took himself no steps. In March last, however, the clerk wrote a letter to his master requesting payment of his salary, which was then in arrear, and also requiring his articles to be inrolled, upon which his Master requested him to attend

him in his drawing-room, upon his doing which, he (as was sworn) committed great personal violence upon the clerk, turned him out of the house, and gave him into the custody of a policeman upon a charge of assault, which, upon investigation by the inspector at the police station, was dismissed.

T. W. Saunders now moved, referring to the 6 & 7 sections of the 6 & 7 Vict. c. 73, which impose the duty of getting the articles inrolled upon the attorney, and depriving the clerk of the benefit of his service under them, unless inrolled within six months, and urged that it would be exceedingly hard upon a clerk who when he enters into his articles necessarily knows nothing of these matters, if he were to lose the advantage of three years and a-half's service by the neglect of his master, and that, under all the circumstances, it would be impossible that he could remain with his present master any longer.

Coleridge, J. I think you may take your rule. Saunders. The first branch of the rule will be absolute for the clerk to enrol them, and to have the advantage of his full period of service. Coleridge. Yes, but the remainder which calls upon the attorney nisi only.

Rule accordingly.

**Common Pleas.**

*Giles and another v. Cornfoot.* Easter Term, 1847.

PROVISIONAL COMMITTEE-MAN.—ATTENDANCE AT MEETING.—EVIDENCE OF IDENTITY.

*In order to establish the identity of the defendant as having been present at a meeting of a railway provisional committee of which he was a member for the purpose of making a resolution passed at such meeting admissible in evidence against him, it is not enough to produce the minute book of the proceedings copied from a previous rough draft, and containing, amongst those present, a similar name to the defendant's, and to show that the defendant was the only person bearing that name on the provisional committee, and that he had been summoned to attend it.*

THIS was an action for the skill and services of the plaintiffs as engineers to a railway company, of which the defendant was one of the registered provisional committee-men. At the trial, before Lord Chief Justice Wilde, on the 10th of February last, at Westminster, it was proved, in addition to the usual preliminary matters, that the first meeting of the provisional committee took place on the 16th of October, 1846. That the defendant, as one of the provisional committee, being the only person of the name on it, had been summoned by circular to attend that meeting, and that at it the plaintiffs were appointed engineers, and the defendant one of the acting committee. A book was then produced containing an entry of the proceedings at the meeting of the 16th, and to one of the resolutions the name H. Cornfoot

(the name the defendant bore) was attached as having been the mover. This entry, it appeared, had been copied from a rough draft made before the meeting, but one witness stated that the resolutions as copied in the book were read over at the meeting. There was no proof whatever of any personal knowledge of the defendant, so as directly to identify him as the H. Cornfoot who appeared from the entry in the book to have been present at the meeting of the 16th. On this evidence the Lord Chief Justice ruled that the entry of a resolution passed on the 16th could not be read against the defendant, and the plaintiffs were therefore nonsuited.

Chunnell, Sergeant, now moved for a rule nisi to set aside the nonsuit, and for a new trial. He submitted that here there was evidence of a person named H. Cornfoot having been present on the 16th; and bearing in mind that it was a meeting of the provisional committee, to which the defendant as one of the members had been summoned, there being no other person on the committee bearing the name of H. Cornfoot, enough appeared to show *prima facie* that the defendant was present on the 16th, and therefore, that the plaintiffs were entitled to read the entry in the minute book as evidence.

*By the Court.* We should have thought it insufficient evidence to leave to the jury, even if it had been shown that a person representing himself to be H. Cornfoot had moved a resolution at the meeting on the 16th, without any further proof. But here all that appears is, that a minute was made beforehand of such persons as were to move resolutions at the meeting, and there is no proof that such persons actually did so move. Then two or three days after it is taken for granted, from what appears in the minute book, without more, that a person saying he was H. Cornfoot was present and did move a resolution. This amounts to nothing like evidence of the defendant having been present.

Rule refused.

#### Exchequer.

*The Midland Great Western Railway Company v. Gordon.* Easter Term, April 16, 1847.

SHAREHOLDER.—CALLS.—ALTERATION OF LINE.

A. applied for shares in a proposed railway from "Dublin to Mullingar and Athlone," and signed the subscription contract, and shortly afterwards sold the scrip. The directors subsequently obtained an act of parliament enabling the company to make a railway from "Dublin to Mullingar and Longford," and there was a clause requiring the company to purchase a canal. In an action against A. for calls, held, first, that he was the shareholder and not the vendee of the scrip; secondly, that he was not discharged from liability by reason of the alteration in the line sanctioned by parliament, or the obligation to purchase the canal.

being the amount of three calls upon the shares in "The Midland Great Western Railway of Ireland." The declaration was in the general form given by the 36th section of the 8 & 9 Vict. c. 16. The defendant pleaded—first "never indebted;" secondly, that he was not nor is the holder of shares in the said railway.

At the trial before Rolfe, B., at the last Liverpool assizes, it appeared that in the year 1844, a prospectus issued of a proposed company for making a railway from Dublin to Mullingar and Athlone—capital one million, in twenty thousand shares of 50*l.* each. On the 21st October, 1844, the defendant applied for shares and signed the subscription contract, but he never subscribed the parliamentary undertaking. Shortly afterwards the defendant *bona fide* sold his scrip in the market, and on the 21st July, 1845, the directors obtained an act of parliament, enabling the company to make a railway from Dublin to Mullingar and Longford. This act contained a clause requiring the company to purchase a certain canal. A verdict having been found for the plaintiff,

Martin moved to set aside the verdict and enter a nonsuit, pursuant to leave reserved.—First, the defendant was not a shareholder at the time the calls were made. The 22nd section of the 8 & 9 Vict. c. 16, enables the company to make calls on "shareholders," but that means the actual holder of shares, not the person who merely signed the subscription contract, and then sold his scrip. *The London and Grand Junction Railway Company, v. Freeman*, 2 Man. & G. 606. Secondly, the defendant never subscribed to the undertaking sanctioned by parliament. He purchased scrip in a proposed railway from Dublin to Mullingar and Athlone, but the act of parliament did not enable the company to carry the railway to Athlone, but only to Mullingar and Longford; it is not therefore the same undertaking as that to which the defendant subscribed. This is an attempt to fix the defendant with a liability, wholly different from that which he entered into by his contract. Besides, the act of parliament required the company to purchase a canal, which was an obligation which the defendant never subscribed to.

Pollock, C. B. As to the first point, I am clearly of opinion that defendant was the shareholder and not the vendee of the scrip. With respect to the other point, the language of the subscription contract gives the greatest discretion to the directors; the subscribers agree to be bound by anything that parliament may do.

Parke, B. A transfer of scrip is only a transfer of an equitable right to have the shares assigned. The defendant therefore was the shareholder and liable to the calls. The only question is, whether he subscribed to the undertaking sanctioned by parliament, I think he did, and it is impossible to say that the purchase of a canal may not be valuable for the purposes of a railway.

Rolfe, and Platt, B's, concurred.

Rule refused.

THIS was an action of debt to recover 155*l.*,

NISI PRIUS CAUSE LISTS.

Common Pleas.

Middlesex.

Strutt	Parratt	S. J. Lord Beresford & another	Ca. { Walker, G., & Co. Wilkinson
J. Francis	Morgan and another	[S. J. Earl Abergavenny	Ca. Richardson and F.
B. Field	Griffin	S. J. Beverley and another	Prom. H. R. Hill
E. Smith	Day	S. J. Daintree	Prom. Amory and Co.
W. E. Goatley	J. P. Shaw	Johnson	Prom. Elmslie and Co.
Venning and Co.	Doe d. Raper	Temperley	Eject. Henderson
Walker, Grant, & Co.	Giles and another	S. J. Cornfoot	Dt. Elmslie and Co.
Same	Same	S. J. J. Wakefield	Dt. Pile
Same	Same	S. J. E. Smith	Dt. G. H. Mirfin
Same	Same	S. J. R. Kiely	Dt. Colombine
Same	Same	S. J. J. M. Durrant	Dt. Palmer, F. and Co.
Same	Same	S. J. T. M. Durrant	Dt. Same
Same	Same	S. J. J. Hilder	Dt. Same
Same	Same	S. J. G. Ballard	Dt. Same
Same	Same	S. J. F. Reeves	Dt. Same
Same	Same	S. J. J. Bishop	Dt. Same
Same	Same	S. J. Lamb	Dt. Same
Same	Same	S. J. Philps	Dt. Same
R. Fisher	Dawson and others	Marriott	Dt. Strangways
Same	Same	Tucker	Dt. E. G. Flight
Same	Same	Ewens	Dt. Clowes and W.
H. Ward	Collins	S. J. Bennett	Dt. Smith
Milburn	Connop	Padgett	Prom. Sheriff
Kingdon and S.	Stannard, assignee, &c.	Marchant	Prom. Horsley
W. F. Walker	Attfield	Chitty	Tres. H. and T. Cross
Stafford	Salmon	Baker	Prom. W. Whalley
Carlton and H.	Hunt	Smart	Trov. J. Notley
Strutt	Parratt	Graham	Prom. Leadbitter
Fitzpatrick	Close	Smith	Ca. Few and Co.
Wakeling	Murphy	Cadell	Dt. T. S. Wright
Anthony	Edwards	Cloke	Ca. Fennell and Co.
G. Lewis	Jackson	Frost	Prom. Townshend
Finney	Davison	Chadwick	Prom. Bebb and Rose
Capes and S.	Joll and another	S. J. Downes	Dt. Bennett and B.
R. Hare	Benton	S. J. Crafts	Tres. Fourdrinier
E. M. Elderton	Newton, Esq.	S. J. Hill, Knt.	Prom. Giles and Co.
Chamberlayne and M.	Edwards	S. J. Mytton	Dt. Rickards and W.
Crouch	Granger	Mayhew	Ca. Boydell and Co.
Staniland and L.	Good	Hewes	Dt. Beavor and B.
J. Duncan	Stead	S. J. Williams	Ca. Hodgson and B.
Clayton and S.	Hargrave	Hargrave	Prom. W. and R. B. Baker
B. W. Nind	Toby	Lovibond	Covt. A. Wolston
Haynes	Haynes	Austin	Prom. Ablett
E. Clarke	Lamb	Jackson	Tres. Dickson and O.
J. and G. Turner	Pierce and another	Feldmann	Dt. Coode, B. and Co.
Burrell and Son	Hills	Croll	Covt. Wire and Child
Sudlow	Rodgers and others	Powell and another	Ca. Johnson and Co.
W. H. Turner	Mears and another	Westcott	Prom. Rickards and W.
Burgoyne and Co.	Hopwood	Whaley	Dt. Robson
Thompson and P.	Thompson	Lack	Covt. Asprey
Wollen	Barnes, admr.	Ward	Case, Parsons
Harbin and Co.	Janes	Fowler	Prom. J. Rosson
Davies, Son and B.	Benson	Haig	Prom. Pocock and M.
Same	Stammers	Taylor	Dt. Carlton and H.
Same	Still, exor., &c.	Evans, admor., &c.	Dt. G. Vincent
Richard and Collett	Ward	S. J. Key	Case, Woolley
Walker, Grant and Co.	Giles and another	Moneypenny	Dt. Smith and Son
Same	Same	Bryant	Dt. Palmer and Co.
Same	Same	Tooth	Dt. Same
Wilde and Co.	Bell, P. O.	S. J. A. G. Marriott	Prom. G. Hall
G. Hensman	Graham & ors., assignees	Ashwell	Case, Hall and Co.
J. Parker	Nutley	Batten	Dt. J. Gregory
Gresham	Toy and another	Taplin	Prom. Townshend
C. Kaye	Miles	Pilbeam	Case, Cross
G. Lewis	Turner	Robinson	Case, Maltby and Co.
D. Watson	Benham	Gray	Tres. W. Cox
Same	Doe d. Benham	Gray	Eject. Same
Philp	Russell, admix., &c.	Pitman, extrix., &c.	Dt. T. H. Johnston
G. Lewes	Dore	Mivart	Prom. Woollen

**Exchequer.**

Kennedy	Kennedy and another	Sprott	Dt. Parkes
Sudlow and Co.	Hobson	S. J. O'Connor	Pro. Yates and T.
Rivington	Autobas	S. J. Barwell	Ca. Clarke F. and Co.
Gregory and Son	Taylor	S. J. Maitland	Dt. Hill and E.
Gregory F. and Co.	Stevens	S. J. Keating	Ca. Taylor and C.
Wright and Co.	Russell	Marquis Conyngham	Dt. Benbow
A. Haynes	Humphreys	Cates	Ca. Parker
Curling	Stokes	S. J. Collett	Tress. Coppock
L. H. Braham	Mac Namara	S. J. Fotheringham	Pro. Hammond
Everest and Co.	White	Wright	Pro. Mawe
Wormald	Doe d. Loscomb	Clifford	Ejt. Gilbert and Co.
Chilton and Co.	Downman	S. J. Morewood	Dt. C. J. Jones

**PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.****THE LORD CHANCELLOR'S BANKRUPTCY BILL.****House of Lords.****NEW BILLS IN PROGRESS.**

Consolidation and Amendment of the Law of Bankruptcy For 2nd reading. The Lord Chancellor.

Repeal of Insolvency Jurisdiction of Courts of Bankruptcy, Abolishing Court of Review, and Reducing Number of Commissioners. (No. 2.) In Select Committee. Lord Brougham.

Insolvent Debtors. Passed. Lord Brougham.

Vexatious Actions. Passed. Lord Brougham.

**House of Commons.****NEW BILLS IN PROGRESS.**

City Small Debts Court. In Committee. Mr. Masterman.

Law of Railways. For 2nd reading. Mr. Strutt.

Agricultural Tenant-right. In Committee. Mr. Strutt.

Pious and Charitable Property. For 2nd reading. Lord J. Manners.

For the Speedy Trial and Punishment of Juvenile Offenders. In Committee. Sir John Pakington.

Lunatic Asylums Regulation. Attorney-General.

Inclosure Act Amendment. Sir F. Thesiger.

Health of Towns. For 2nd reading. Lord Morpeth.

Towns Improvement Clauses. For 2nd reading.

Taxation of Costs on Private Bills. For 2nd reading. Mr. Hume.

Registration of Voters. For 2nd reading. Mr. Walpole.

Highways. In Select Committee. Sir Geo. Grey.

Administration of the Poor Laws. Sir Geo. Grey.

WE have just obtained a sight of the Lord Chancellor's new bill for consolidating and amending the Law of Bankruptcy. It consists of 319 sections, besides the schedules, and occupies 132 pages folio.

It proposes to repeal all the former statutes respecting bankruptcy; to establish a Court of Bankruptcy as a Court of Record; to abolish the Court of Review, and give jurisdiction to the Vice-Chancellors, with an appeal to the Lord Chancellor and the House of Lords; to reduce the number of commissioners; to form sub-division courts; to reduce the number of registrars; to enable all attorneys and solicitors to appear and plead,—others practising to be deemed guilty of contempt of court. After various financial provisions, the bill proceeds to describe the persons liable to bankruptcy, and the various acts of bankruptcy; the proceedings under the fiat; provisions as to property; proof of debts; the bankrupt's certificate, &c.; including most of the provisions in the former statutes, with some alterations and new enactments, particularly as to deceased traders having no representatives.

Lord Brougham's bill has been referred to a select committee.

**THE EDITOR'S LETTER BOX.**

THE communications of a "Subscriber" on the appointment of new trustees and on the Small Debts Act, shall receive early attention.

The letter on the Registration of Deeds we hope to notice next week.

The point put by "Veritas" shall be considered.

The suggestion relating to the Attorney's Certificate Duty is valuable.

The communication from a Correspondent at Reading on the disallowance of costs incurred in the New County Courts, shall be inserted in our next number.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE,

SATURDAY, MAY 8, 1847.

—“ Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

### REMEDY, UNDER THE NEW COUNTY COURTS ACT, AGAINST TENANTS HOLDING OVER.

THE facilities afforded to landlords, under the provisions of the statute 9 & 10 Vict. c. 95, summarily to recover the possession of tenements from tenants holding over after the determination of their tenancies, entitles this portion of the act to a more attentive consideration than has yet been bestowed upon it in any publication which has fallen under our observation.

As already intimated,<sup>a</sup> the sections upon which this branch of the authority of the County Courts rests, are copied from the act 1 & 2 Vict. c. 74, with such modifications as were deemed necessary for their adaptation to the machinery of the newly established tribunals, and with some important alterations, the effect of which it is desirable should be clearly understood.

The jurisdiction, under the 1 & 2 Vict. c. 74, was vested in “the justices acting for the district, division, or place within which the premises sought to be recovered were situate, in petty sessions assembled, or any two of them;” and it becomes a grave question, and one on which considerable doubt is entertained, whether the justices still possess a concurrent jurisdiction with the judges of the County Courts, or whether the act 1 & 2 Vict. c. 74, is not repealed by the stat. 9 & 10 Vict. c. 95, and the authority of the justices, under the first of those acts, totally determined?

The authority conferred on the judges of the County Courts in this particular is

founded on the 122nd section of the act, which provides that—

“When and so soon as the term and interest of the tenant of any house, land, or other corporeal hereditament, where the value of the premises, or the rent payable in respect of such tenancy, did not exceed the sum of fifty pounds by the year, and upon which no fine shall have been paid, shall have ended, or shall have been duly determined by a legal notice to quit, and such tenant, or, if such tenant do not actually occupy the premises, or occupy only a part thereof, any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises, or of such part thereof respectively, it shall be lawful for the landlord or his agent to enter a plaint in the county court to be holden under this act, and thereupon a summons shall issue to the person so neglecting or refusing; and if the tenant or occupier shall not thereupon appear at the time and place appointed, and show cause to the contrary, and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof of which he is then in possession, to the said landlord or his agent, it shall be lawful for such landlord or agent to give to the court proof of the holding, and of the end or other determination of the tenancy, with the time or manner thereof, and where the title of the landlord has accrued since the letting of the premises, the right by which he claims the possession; and upon proof of service of the summons, and of the neglect or refusal of the tenant or occupier, as the case may be, it shall be lawful for the judge to issue a warrant under the seal of the court to any bailiff of the court, requiring and authorising him, within a period to be therein named, not less than seven or more than ten clear days from the date of such warrant, to give possession of the premises to such landlord or agent; and such warrant shall be a sufficient warrant to the said bailiff to enter upon the premises, with such

<sup>a</sup> *Ante*, vol. 32, p. 618.



assistants as he shall deem necessary, and to give possession accordingly: provided always, that entry upon any such warrant shall not be made on a *Sunday, Good Friday, or Christmas-day*, or at any time except between the hours of nine in the morning and four in the afternoon: provided also, that nothing herein contained shall be deemed to protect any person by whom any such warrant shall be sued out of the County Court from any action which may be brought against him by any such tenant or occupier for or in respect of such entry and taking possession where such person had not, at the time of suing out the same as aforesaid, lawful right to the possession of the same premises."

This section differs from the corresponding provision of the statute 1 & 2 Vict. mainly in these particulars. Whilst the jurisdiction, under the 1 & 2 Vict., was confined to cases in which the tenant "held at will, or for any term not exceeding seven years," those words are omitted in the 9 & 10 Vict., and the authority of the judges of the County Courts extends to cases where the relation of landlord and tenant is not founded upon a tenancy at will, or a term limited to seven years. The operation of the 1 & 2 Vict. also was confined to cases in which the tenant held, "either without being liable to the payment of any rent, or at a rent not exceeding the rate of 20*l.* a year, and upon which no fine shall have been reserved or made payable." The recent act, it will be observed, applies to cases where the value of the premises, or the rent, does not exceed the sum of 50*l.* by the year, *and upon which no fine shall have been paid*. The substitution of 50*l.* for 20*l.*, as the maximum of the annual value or rent, considerably enlarges the scope and bearing of the enactment, and renders it applicable to a different class of holdings; but we strongly suspect that the conjunctive branch of the sentence, printed in italics, will restrict the operation in a manner not contemplated by those who undertook the task of adapting the clause. The words "upon which no fine shall have been reserved or made payable," as found in the 1 & 2 Vict., are different in their meaning and effect from the words "upon which no fine shall have been paid." According to our understanding of the last-mentioned words, the effect will be to exclude from the operation of the act every case in which the tenant has paid any sum of money by way of fine, either upon entering into possession, or subsequently, without any reference to the amount of the rent. The warrant to be

issued under the 122nd section, above cited, also varies materially from that which the 1 & 2 Vict. authorised. The justices' warrant was to be executed within not less than 21, or more than 30, days from its date, instead of seven and ten days, as now prescribed, and the officer to whom the warrant was directed was commanded "to enter *by force, if needful*, into the premises, and give possession of the same to such landlord or agent." The late act declares, that the warrant issued by the judge shall be a sufficient warrant to the bailiff to enter upon the premises with assistants, and give possession, but it does not expressly authorise him to effect an entrance by force; and the question will therefore arise, whether if a contumacious tenant barricades the premises and refuses admittance to the bailiff, his warrant will justify the latter in breaking open the outer door and forcibly ejecting the inmates. We are not in possession of the precise form of warrant which it is proposed to adopt in such cases. Number 30 of the forms of proceeding in the Small Debts Courts settled by the judges, (*ante*, p. 443,) is the form of a judgment for the recovery of a tenement, and a directory note is added to it in these words:—"The warrant for the execution of this order may be drawn from this form." The responsibility of drawing the warrant, therefore, we presume, is intended to be thrown upon the plaintiff, or his attorney, and upon looking to the form of the judgment upon which the warrant is founded, we find it adjudicates that a warrant shall issue "to require and authorise the bailiff of the said court to give possession of the said house (&c.) to the said plaintiff," but the judgment does not in terms disclose that the bailiff is to be authorised to enter by force if necessary, although the mandatory part of the warrant given by the statute 1 & 2 Vict. c. 74, expressly directed the officer "to enter by force, if needful," and with or without assistance, "into and upon the said tenement, and to eject thereout any person."

Section 126 of the act of last session, directing how the execution of warrants of possession may be stayed, is, with a few immaterial verbal alterations, copied from the corresponding section of the statute 1 & 2 Vict.,<sup>c</sup> and, after enacting that such warrant, without the right of possession, shall

<sup>b</sup> See Form No. 3, in the schedule to stat. 1 & 2 Vict. c. 74.

<sup>c</sup> 1 & 2 Vict. c. 74, s. 3.

be deemed a trespass, although no entry be made under the warrant, proceeds as follows:—

“And in case any such tenant or occupier will become bound, with two sufficient sureties, to be approved by the clerk of the court, in such sum as to the judge shall seem reasonable, regard being had to the value of the premises, and to the probable cost of such action, to sue the person by whom such warrant was sued out with effect and without delay, and to pay all the costs of the proceeding in such action in case a verdict shall pass for the defendant, or the plaintiff shall discontinue or not prosecute his action or become nonsuit therein, execution upon the warrant shall be stayed until judgment shall have been given in such action of trespass; and if upon the trial of such action of trespass a verdict shall pass for the plaintiff, such verdict and judgment thereupon shall supersede the said warrant.”

It will be observed that there is no direction as to the court in which the action of trespass is to be prosecuted, and we apprehend, therefore, that it is left to the discretion of the tenant or occupier, who considers himself aggrieved, to sue in one of the superior courts, if he estimates his damage at any sum exceeding 20*l.*, or to proceed in the County Court, if he is satisfied with damages under 20*l.*

The next section of the 9 & 10 Vict., (s. 127,) with respect to the form and effect of the bond given by the tenant or occupier for staying the execution of the warrant of possession, contains some additions to the parallel clause in the act 1 & 2 Vict., which are in a great degree unintelligible. The section is as follows:—

“Every bond given on the removal of any action out of the county court, or upon staying the execution of any such warrant of possession aforesaid, or on moving for a new trial, or to set aside a verdict, judgment, or nonsuit, shall be made to the other party to the action at the costs of such other party, and shall be approved by the judge, and attested under the seal of the court; and if the bond so taken be forfeited, or if, upon the proceeding for securing which such bond was given, the judge before whom such proceeding shall be had shall not certify upon the record in court that the condition of the bond hath been fulfilled, the party to whom the bond shall have been so made may bring an action of debt, and recover thereon: provided always, that the court in which such action as last aforesaid shall be brought may by a rule of court give such relief to the parties liable upon such bond as may be agreeable to justice and reason, and such rule shall have the nature and effect of a defeasance to such bond.”

As the preceding clauses make no men-

tion of a bond to be given “on moving for a new trial, or to set aside a verdict, judgment, or nonsuit,” we are at a loss to conceive why these words have been introduced. It is clear, however, that this provision renders the previous enactment much less stringent and effective. The tenant who desires to retain possession has a right to demand that the proceedings under the warrant shall be stayed, upon complying with the requirements of this section. The bond by the tenant and his sureties is to be made *at the cost of the landlord*, the tenant may bring his action for the trespass in any court he thinks fit, and until the action be finally disposed of, the landlord, however indisputable his title, has no means of obtaining possession of the premises. When the action of trespass has been determined, the landlord's remedy, where the bond is forfeited, is by an action of debt on the bond, a circuitous and expensive proceeding, which a landlord may well feel some reluctance in resorting to.

As already intimated, considerable doubt is entertained whether the authority of the justices in petty sessions, under the statute 1 & 2 Vict. c. 74, in regard to tenements rented at a sum not exceeding 20*l.* per annum, is superseded by the provisions of the County Courts Act, or continues in force. The act 1 & 2 Vict. c. 74, is not expressly repealed by the act of last session, but the 6th section, to the sweeping character of which we have already had occasion to refer, enacts, that after the County Courts have been established, “every act of parliament heretofore passed, so far as the same respectively relate to or affect the jurisdiction and practice of the courts so established, or give jurisdiction to any court, or to any commissioner of bankruptcy, with respect to judgments or orders obtained in the courts so established, shall be repealed.” The question, therefore, is, whether the stat. 1 & 2 Vict. empowering justices to issue warrants of possession in specified cases, is an act which relates to or affects the jurisdiction and practice of the County Court? In one sense, it undoubtedly is! It gives to justices the same jurisdiction, in regard to tenements of 20*l.* value, as is now conferred on the judges of the County Courts. Still it does not relate to or affect the new jurisdiction in such a manner as to prevent or preclude its effective exercise, and in the absence of any judicial decision, we are disposed to think the courts will hold that the 1 & 2 Vict. is not repealed by necessary implication.

## UNAUTHORISED EXAMINATION OF PARTY BY ARBITRATOR.

THE conflicting principles of the systems established in the superior courts, and about to be put in operation in the County Courts throughout England are curiously exemplified in a case very recently reported.<sup>d</sup>

As our readers are aware, the form of an order of reference commonly used, contains a stipulation that the arbitrator shall be at liberty, if he shall think fit, to examine the parties to the suit upon oath. In the case referred to, where the defendant was an executor, and not likely to be personally cognizant of the transaction which formed the subject-matter of the action, it was agreed, upon a reference of the cause to a lay arbitrator, that the stipulation authorising the examination of the parties should be struck out. In the course of the proceedings under the reference, however, the plaintiff was called by his attorney to support his own case, and his evidence was admitted by the arbitrator, although objected to, the arbitrator appearing to think that he had a discretionary power to admit the plaintiff to be examined. The defendant's counsel thereupon cross-examined the plaintiff, and endeavoured to establish a claim of set-off by his evidence. The award was in favour of the plaintiff, and the matter came before *Wightman, J.*, sitting in the Bail Court, upon an application to set aside the award, on the ground, that by permitting the plaintiff to be examined, the admitted evidence not legally admissible without express authority to that effect.

In the course of the argument, the learned judge observed, that in practice, even when power is given to examine the parties, it is not usual to examine the plaintiff for himself, or the defendant for himself; and in the course of his judgment, (which was pronounced after much consideration,) the learned judge said, that although he had been unable to find an express decision as to the power of an arbitrator to allow a party to give evidence as a witness, without an express authority for that purpose, upon principle such a course seemed objectionable and an excess of the authority of the arbitrator. Under the special circumstances of the present case, however, it was clear the plaintiff ought not to have tendered his own evidence, nor ought the arbitrator to have re-

ceived it. The usual clause giving the arbitrator authority was, by consent, struck out; and examining the plaintiff afterwards as a witness for himself was so much in fraud of the defendant; that the award made in the plaintiff's favour, upon his own evidence, ought not to be allowed to stand, unless the defendant by his own conduct had waived the objection. The learned judge was of opinion, that by continuing to attend the reference, and cross-examining the plaintiff, the defendant had not disqualified himself from taking the objection, and therefore, that it was sufficient, and the award must be set aside.

The examination of a plaintiff for himself, which is considered eminently conducive to the ends of justice as administered in the new County Courts, is held to be so repugnant to principle in the superior courts, that an award made under such circumstances is thereby vitiated. This is an anomalous state of things, which it is not desirable should be suffered to continue much longer.

## THE LORD CHANCELLOR'S NEW BANKRUPTCY BILL.

THIS is a bill "to consolidate the Statutes and amend the Law of Bankruptcy." It recites, that it is expedient to amend the Laws relating to Bankrupts, and to consolidate the same so amended in one act and to make other provisions respecting bankrupts. It is therefore proposed as follows:—

1. Former enactments respecting bankrupts repealed. 1 & 2 Geo. 4, c. 15; 6 Geo. 4, c. 16; 1 Wm. 4, c. 7; 1 & 2 Wm. 4, c. 56; 2 & 3 Wm. 4, c. 114; 3 & 4 Wm. 4, c. 47; 5 & 6 Wm. 4, c. 29; 6 & 7 Wm. 4, c. 27; 1 & 2 Vict. c. 110; 2 Vict. c. 11; 2 & 3 Vict. c. 29; 5 & 6 Vict. c. 122; 7 & 8 Vict. c. 96; 7 & 8 Vict. c. 111; 8 & 9 Vict. c. 58; 9 & 10 Vict. c. 28. Not to revive repealed acts.

2. Confirmation of all things done under repealed acts.

3. Construction of act. "Her Majesty." "Lord Chancellor." "The court." "Fiat." "Annulling." "Month." "Assignees." "Oath." "Bank." "Estate." "Base fee." "Estate tail." "Actual tenant in tail." "Tenant in tail." "Tenant in tail entitled to a base fee." Settlement. Singular and plural. Gender.

4. Aliens and denizens. Scotland and Ireland. Construction beneficial to creditors.

5. Court of Bankruptcy a court of record.

6. Court of Review abolished.

7. Jurisdiction of Vice-Chancellor to hear appeals. To be attended by Chancery registrars, &c. Documents to be filed in Chancery. Fees payable for filing, &c.

<sup>d</sup> *Smith v. Sparrow*, 16 L. J. 139, B. C.

8. Petitions, &c., to be transferred to Secretary of Bankrupt's Office. Fees.
9. Vice-Chancellor a court of record.
10. References to commissioners.
11. Lord Chancellor to direct sittings of Vice-Chancellor.
12. Mode of application to Vice-Chancellor. Mode of appeal to the Lord Chancellor.
13. Vice-Chancellor may direct issues.
14. New trial of issues.
15. Costs in the court of Vice-Chancellor.
16. Appeal to the House of Lords.
17. On appeals as to proofs, dividend to be set apart.
18. Determination of Vice-Chancellor in favour of appeals touching such decisions to be final, unless appealed against within one month.
19. Commissioners.
20. The powers of commissioners.
21. Each commissioner to be a court.
22. Each court a court of record.
23. Commissioners to exercise original jurisdiction of court of review.
24. Appeal from any order of any court of bankruptcy.
25. Powers given to her Majesty with respect to sittings of the court.
26. Bankruptcies depending in the country to be removed into such of the courts as the Lord Chancellor may think fit.
27. Courts to be auxiliary to each other for proof of debts and examination of witnesses.
28. London commissioners.
29. Country commissioners. District courts.
30. Lord Chancellor may attach the country commissioners to districts.
31. Lord Chancellor may authorize any commissioner or registrar in London, or other qualified person, to act for or in aid of any country commissioner or registrar, and *vice versa*; or any country commissioner or registrar of one district to act for or in aid of any country commissioner or registrar of any other district, as may be required.
32. Lord Chancellor authorized to give necessary directions where courts shall sit.
33. Court of Review and subdivision courts declared to have been courts of record.
34. Oath of Vice-Chancellor and commissioners.
35. Subdivision courts. Mode of forming subdivision courts in case of non-attendance of any commissioners of the subdivision to which cause is referred. Proviso for reduction in number of commissioners.
36. Adjournment of examinations to subdivision courts. Trial of disputed debts.
37. Accountant in bankruptcy.
38. Lord Chancellor to appoint clerks to accountant.
39. Taxing officer. Tenure of office, duties, and removal.
40. Taxation of costs. Charges of auctioneers, appraisers, valuers, and accountants, to be taxed.
41. Sum to be paid on the taxation of bills.
42. Sums received by the master to be paid into the Bank of England, after deducting such sum as the Lord Chancellor thinks fit for expenses of office.
43. Power to appoint clerks to master.
44. In case of sickness or other reasonable cause, the duty of the master may be performed by his chief clerk.
45. Reduction of number of registrars, and payments to them. Offices of five registrars abolished, but to receive their present salaries for life. Proviso if they hold any other public offices.
46. Registrars, their number and appointment.
47. Registrar to act for commissioner.
48. Court may send a registrar to take proof of debts, &c. where expedient. Examinations to be taken down.
49. Documents to be filed in master's office.
50. Master to keep abstract of all proceedings.
51. Duties of chief registrar transferred to master.
52. Official assignees. Appointment. Their duty. Official assignee to act as sole assignee till creditors' assignees chosen.
53. Proviso restricting the authority of official assignees.
54. Power to court to appoint another official assignee on death or removal.
55. Power to appoint official assignees to act with the existing assignees under fiats or commissions, and to whom the latter shall deliver over effects.
56. Remuneration to official assignee.
57. To exempt official assignee from personal liability.
58. Lord Chancellor to appoint messengers. Ushers to be appointed by commissioners.
59. The Lord Chancellor to make general orders as to duties of officers of Court of Bankruptcy, who are to hold office during good behaviour, but are removable by Chancellor.
60. All attorneys and solicitors may practise in the Court of Bankruptcy.
61. Clerk of enrolments abolished.
62. Providing for the custody of records under former commissions.
63. Liberty to search.
64. Deposition of deceased witness of petitioning creditor's debt, trading, or act of bankruptcy to be evidence of the matters therein contained.
65. No fiat to be received in evidence unless first sealed.
66. Office copies made evidence in certain cases. Costs of producing original instrument when not allowed.
67. Proceedings in bankruptcy, purporting to be sealed with the seal of the court, to be received as evidence.
68. Sum to be paid to the secretary of bankrupts on the granting of every fiat. Application thereof.
69. Assignee of bankrupt's estate to pay 20*l.* to the like account.
70. Sums to be paid on commissions or fiats moved into the Court of Bankruptcy, or into any of the country courts, under which the

choice of assignees shall have taken place. Sums to be paid on all commissions moved into the Court of Bankruptcy. Restriction of fees on auditing assignees' accounts.

71. Power for the secretary of bankrupts to receive the fees in schedule (A.)

72. Fees to be paid into the bank by official assignee. Fees may be reduced.

73. Fees to be taken and accounted for by the master.

74. Fees to be taken and accounted for in the country district courts.

75. In case of a surplus in the secretary of bankrupts' account, the Lord Chancellor may order an abatement of fees.

76. Part of the money in the bank belonging to bankrupts' estates may be carried to "The Bankruptcy Fund Account."

77. Securities purchased may be changed.

78. In certain cases the Lord Chancellor may order the securities purchased under this act to be sold.

79. If money not sufficient for the purposes of this act, the same to be made good by parliament.

80. Cash in the bank belonging to bankrupts' estates to be one common and general cash.

81. Lord Chancellor empowered to direct monies standing to the credit of the several accounts to be transposed in aid.

82. Salaries to commissioners and certain other officers of the Court of Bankruptcy, to be paid out of the fund intitled "The Secretary of Bankrupts' Account."

83. Power to Lord Chancellor to order retiring annuity to commissioners of the Court of Bankruptcy and their successors.

84. Power to Lord Chancellor to order retiring pension to Master Accountant in Bankruptcy, or registrars.

85. Salaries to be paid on such days as the Lord Chancellor shall direct.

86. Travelling expenses, &c., of commissioners to be paid out of "The Secretary of Bankrupts' Account," and the amount thereof to be in the discretion of the Lord Chancellor.

87. Provision for salary of accountant in bankruptcy; for clerks to accountant or master; and also for expenses, country courts, offices, law books, rent, &c.

88. Salary of accountant to be in lieu of fees. **Brokers' charges.**

89. Provision for compensation to the patient of bankrupts, and others.

90. Compensation to commissioners as the Lords of the Treasury deem entitled thereto. Compensation to commissioners, clerk of enrolments, clerks, ushers, and other officers, whose offices are abolished.

91. Retiring allowance to Charles Elley.

92. Returns to parliament by Accountant in Bankruptcy.

93. Returns by master.

94. Returns by official assignees.

95. Recital of 1 & 2 Geo. 4, c. 115. Contract with the corporation of London. Building for the transaction of business in bank-

ruptcy in London vested in the commissioners of the Court of Bankruptcy for the time being.

96. The building to be called the Court of Bankruptcy.

97. Sittings and meetings under fiats to be held in the new building.

98. Confirming the contract with the corporation of London.

99. The buildings to be under the direction of the commissioners and trustees.

100. The buildings not to be occupied as a residence, except by registrar of meetings and housekeeper.

101. Registrar of meetings. Duty of registrar of meetings.

102. Registrar of meetings to give security. His oath.

103. Housekeeper to be appointed.

104. Power to remove registrar of meetings and housekeeper.

105. Salaries to registrar of meetings and housekeeper.

106. Forming a fund for reimbursement of expenses under the act.

107. Sittings and meetings to be held in the Court of Bankruptcy only.

108. Application of the money to be received.

109. Fees for reimbursing expenses may be increased.

110. When expenses under the act shall have been repaid, the fees to be reduced.

111. Riotous persons to be taken into custody.

112. The district courts provided for the purposes of this act to vest in the respective commissioners.

113. Charge for the use of district court. Subject to reduction.

114. Present rules, orders, and practice made applicable to this act and to fiats.

115. Restriction as to commissioners and officers practising as barristers, or being attorneys.

116. Commissioners and officers under this act ineligible to sit in parliament.

117. Master accountant in bankruptcy, registrars, official assignees, &c. to be exempt from serving on juries, or in any parochial office.

118. Penalty on any officer taking fees.

119. Offences against this act.

120. Seal of the court.

121. Lord Chancellor to make rules for regulating the proceedings of the court.

122. Rules to be made for regulating the forms of proceedings and practice to be observed in the courts authorized to act under fiats in bankruptcy.

123. Costs may be awarded.

124. Fiats, deeds, and other instruments relating to bankruptcy not liable to stamp duty.

125. Between whom affidavits are to be sworn.

126. Affidavits may be sworn in prison before visiting justice or keeper of prison.

127. Courts may take evidence *videlicet* or upon affidavit.

128. Bankrupts may be examined after

making and signing declaration. Not to affect right of court to commit for unsatisfactory answers, &c.

129. Warrants to be under hand and seal, and every summons to be in writing under the hand of a commissioner of the court.

130. Service of summons where person keeps out of way.

131. Punishment of false evidence, or swearing, affirming, or declaring anything false.

132. Application of forfeitures.

133. Orders in bankruptcy to have effect of judgments.

134. Writs have been framed. New writs may be framed.

135. Persons disobeying any order of the court to be committed to prison, until they conform, or the court or Vice-Chancellor shall otherwise order.

136. What persons, traders, liable to bankruptcy. What persons not liable.

137. Traders having privilege of parliament may be proceeded against as other traders.

138. Departing the realm: absenting; beginning to keep house; yielding to prison; fraudulent outlawry; arrest; attachment, execution, conveyance, surrender, or gift: acts of bankruptcy.

139. Conveyance of all a trader's property not an act of bankruptcy unless a fiat issue within six months. Proviso as to the execution, and notice in the *Gazette* and newspapers.

140. Lying in prison; escaping out of prison; acts of bankruptcy.

141. Trader filing a declaration of insolvency in the office of the secretary of bankrupts, an act of bankruptcy.

142. Trader compounding with petitioning creditor an act of bankruptcy. Fiat may either be annulled or continued. Penalty on creditor so compounding.

143. Trader having privilege of parliament, not paying or compounding to the satisfaction of the creditor, and also entering an appearance to the action within one month, an act of bankruptcy.

144. Trader having privilege of parliament, disobeying order of any court of equity, or in bankruptcy or lunacy, for payment of money after service and peremptory day fixed, an act of bankruptcy.

145. Filing petition in Insolvent Debtors' Court an act of bankruptcy, if acted upon within a certain time; in which case vesting order in insolvent court avoided.

146. Form of account, and notice requiring payment substituted for the form in 5 & 6 Vict. c. 122, schedule (A. No. 2.)

147. Creditor of a trader making affidavit of his debt and of his having required payment, court may summon the trader. Form of affidavit substituted for the form in schedule in 5 & 6 Vict. c. 122.

148. Manner of proceeding on summons of trader by a creditor.

149. The court may require to be satisfied by other means than the trader's deposition, of his having a good defence to the demand.

150. On non-appearance of trader, or his not satisfying the court that he has a good defence, the court may require him to give an account of his stock in trade, and a bond for duly carrying on his trade, and accounting for it at the end of 14 days.

151. On non-appearance of the trader, or his not accounting or giving such bond, a warrant may be issued.

152. The person to whom such warrant is addressed, empowered to enter the trader's place of business, &c., and take charge of his goods.

153. Period during which such warrant may be acted on.

154. Power to the court to extend or limit such period.

155. Trader not attending summons, or refusing to admit the demand and not making deposition of belief of a good defence thereto, and not paying or compounding within a certain time, or giving bond for payment, to be deemed an act of bankruptcy.

156. Trader signing an admission of demand in form prescribed, and not paying, securing, or compounding within a certain time, an act of bankruptcy.

157. Trader admitting part only of a demand, and not making deposition of a good defence to the residue, and not paying, securing, or compounding for sum admitted; and, as to residue, not paying or compounding or entering into bond to pay, any sum recovered, with costs, an act of bankruptcy.

158. What shall be deemed a refusal of admission of debt. Court may enlarge the time for admission of demand.

159. Admission of debt signed elsewhere than in court, if attested by attorney of trader, may be filed, and have the same force as an admission signed by a trader on his appearance in court under the summons.

160. Trader summoned on affidavit of debt to have such costs as the court shall think fit.

161. Wherever a creditor (plaintiff) shall not recover the amount sworn to in his affidavit filed against a trader, if such affidavit be made without probable cause, the trader (defendant) shall be entitled to costs.

162. Trader not paying, securing, or compounding for a judgment debt, upon which the plaintiff might sue out execution within 14 days after notice requiring payment, an act of bankruptcy.

163. Trader disobeying order of any court of equity, or order in bankruptcy or lunacy, for payment of money, after service of order for payment on a peremptory day fixed, an act of bankruptcy.

164. No person liable upon an act committed more than 12 months.

165. Petitioning creditor shall make oath of his debt.

166. Amount of petitioning creditor's debt. May be upon debt payable at a future time, although security given.

167. Proceeding in case petitioning creditor's debt be insufficient to support fiat.

168. Petitioning creditor to prosecute fiat at his own costs, until choice of assignees.

169. Costs in the country to be taxed by the registrar.

170. Power to the Lord Chancellor to issue a fiat.

171. Fiat to issue against a trader having filed a declaration of insolvency, upon the petition of the trader himself.

172. In cases of a second or other fiat being issued, Lord Chancellor may direct that such fiats be proceeded in separately or in conjunction.

173. Auxiliary fiats for proof of debts or examination of witnesses. Examinations to be annexed to the original fiat.

174. Fiats to be filed.

175. Fiats not directed to London to be directed to one of the courts in the country.

176. Secretary of bankrupts to ballot for commissioner.

177. Fiats to be transmitted direct to the court to act in the prosecution thereof, and forthwith opened, unless postponed by the court. In case fiat is not opened by petitioning creditor in the time allowed. No fiat to be issued to petitioning creditor.

178. Fiats in the country and proceedings thereon to be transmitted to court of bankruptcy, to be there filed.

179. Commissions depending in London to be removed into the court of bankruptcy.

180. Power to annul fiat.

181. Power to the Lord Chancellor to order satisfaction.

182. Concerted bankruptcies.

183. Fiat not invalid by reason of prior act of bankruptcy.

184. Fiats not to abate by demise of the Crown. Renewed fiat. Death of bankrupt.

185. Joint fiats may be issued against partners in a firm; may be annulled as to one or more, without affecting the rest.

186. Persons against whom a fiat has issued, on proof of probable cause for believing that he is about to quit England, or to remove or conceal his goods, with intent to defraud creditors, may be arrested, and his goods seized.

187. Any person so arrested may apply for his discharge forthwith. Court may discharge the person or not. Order of court may be appealed from.

188. Court before adjudication may summon persons to give evidence of trading and act of bankruptcy. Adjudication.

189. Person adjudged bankrupt to have notice thereof before adjudication advertised, and to be allowed five days to show cause against adjudication; if petitioning creditor's debt, trading, or act of bankruptcy appear insufficient, adjudication to be annulled; but if no cause shown for annulling adjudication, notice to be advertised, and sittings appointed for surrender. With consent of bankrupt, adjudication may be advertised sooner. Bankrupt to be free from arrest.

190. If a bankrupt shall not proceed to dispute the fiat, with effect, the *Gazette* to be con-

clusive evidence of the bankruptcy as against the bankrupt, and against persons whom the bankrupt might have sued had he not been adjudged bankrupt, saving present rights for which any proceedings are pending.

191. Provision for debtor to the bankrupt's estate paying the debt into court, when sued by the assignees within the time for bankrupt to dispute.

192. Court empowered to summon persons suspected of having bankrupt's property in their hands, &c.; and compel them to produce books, &c.

193. Power to examine persons summoned or present at any meeting or sitting. Persons refusing to be sworn, or to answer, or not fully answering, or refusing to sign examination, or to produce books, &c., may be committed.

194. Persons known or suspected to have bankrupt's property to have costs. Witnesses to have expenses tendered.

195. Court may summon bankrupt. Power to examine the bankrupt. Bankrupt refusing to make declaration, or answer, or not fully answering, or to sign his examination, may be committed.

196. Court may summon and examine the bankrupt's wife.

197. Penalty on gaoler for escape.

198. Questions to be particularly specified on warrant. If habeas corpus be brought, the judge may recommit the prisoner. Court or judge may look at the whole of the examination.

199. In actions of false imprisonment the court may look at the whole of the examination of the party committed.

200. Messenger may break open the bankrupt's doors, &c. and seize upon his body or property.

201. Execution of warrant in Ireland.

202. Execution of warrant in Scotland.

203. Search warrants may be granted.

204. Actions against persons acting in obedience to warrant.

205. Proof in such actions that defendant is petitioning creditor renders him liable.

206. Debts, how to be proved. By corporations, &c. Creditor may be examined upon oath.

207. *Bond fide* creditors to prove notwithstanding any secret act of bankruptcy.

208. Court may order three months' wages or salary to clerks or servants.

209. Court may order wages not exceeding 40s. to labourer or workman.

210. Apprentices discharged from their indentures. Court may order any sum to be paid in respect of apprentice fees.

211. Mutual debts and credits may be set off, notwithstanding a secret act of bankruptcy.

212. Debts not payable at the time of the bankruptcy may be proved, deducting rebate of interest.

213. Sureties and persons liable for the debts of bankrupts may prove, after having paid such debts.

214. Obligees in bottomry or respondentia



bonds, and assured in policy of insurance, admitted to claim, and after loss to prove. Persons effecting insurance admitted to prove loss.

215. Annuity creditor admitted to prove.

216. Sureties for payment of annuities granted by bankrupt, in what manner to come in under the fiat.

217. Debts contingent at the time of the bankruptcy to be proveable after the happening of contingency.

218. Interest on promissory notes and bills of exchange proveable.

219. Plaintiff obtaining judgment, &c., entitled to prove for costs, &c.

220. Proving a debt under a fiat to be an election not to proceed against the bankrupt by action. Creditor having elected to come in under the fiat, if it be afterwards annulled, restored to his former rights.

221. Court may expunge proof of debts. Persons requiring investigation to sign undertaking for costs. Application by petition reserved.

222. Choice of assignees at first meeting. How chosen. Court may reject any person chosen as unfit.

223. Joint creditor entitled to prove under separate fiat for the purpose of voting in the choice of assignees; not to receive dividend unless petitioning creditor against one of the firm.

224. Evidence of appointment of assignees.

225. Personal estate to vest in assignees.

226. Real estate to vest in assignees.

227. Where a conveyance of the property of a bankrupt would require to be registered, the certificate of appointment of the assignees shall be registered.

228. Removal of assignees.

229. Suits not to abated by death or removal of assignees.

230. Assignees may appoint the bankrupt to superintend the management of the estate.

231. Assignees directed to keep a book of account of bankrupt's estate. Court may summon assignees, &c.

232. Court may direct money to be vested in exchequer bills.

233. Assignee disobeying direction to pay or invest money, and retaining it, or permitting co-assignee to retain or employ it, to be charged with 20 per cent.

234. If assignee become bankrupt, having bankrupt's estate wilfully retained, his certificate shall not discharge his future effects in respect of it.

235. Assignees, with consent of creditors, may compound or submit disputes to arbitration, or commence suits in equity. Or, court to have power to make order.

236. Reference to arbitration made a rule of court.

237. In cases of a member of a firm being bankrupt, the court, upon application, may authorize actions or suits in name of the assignee of the bankrupt and the remaining partner. Partner to have notice of such application, and may show cause against it. Court may direct partner to have part of proceeds.

238. In actions by or against any person acting under the fiat, no proof required, at the trial of petitioning creditor's debt, trading, or act of bankruptcy, unless notice be given that those matters are to be disputed.

239. The same in suits in equity.

240. If the fiat afterwards annulled, persons from whom the assignees have recovered, or *bonâ fide* paying the assignees, &c., discharged from claims by the bankrupt.

241. Creditors having securities for their debts, not to receive more than other creditors. Judgment or execution on a cognovit signed after declaration filed, not within this act.

242. Audits whenever the court think fit after the bankrupt's last examination.

243. Method of making dividends. No dividend without previous audit.

244. Final dividend within eighteen months; except where suit depending, or estate standing out, &c.

245. Debtor and creditor account to be furnished by official assignee to creditors' assignee before final dividend.

246. No action to be brought for dividends, but the remedy to be by application to a court of bankruptcy.

247. Unclaimed dividends to be paid into the bank to the credit of the accountant in bankruptcy.

248. How unclaimed dividends, &c., in the hands of assignee to be disposed of.

249. Certificates to be given to assignees, on production of which Bank of England shall receive the sums therein mentioned, and give receipts for the same.

250. Bankrupt to deliver up his books of account to the official assignee upon oath; to attend assignees; to be at liberty to inspect accounts; after allowance of certificate, to attend assignees in settling accounts. Allowance for attendance. Commitment for non-attendance.

251. To be free from arrest during examination, if not in custody. If arrested, to be discharged on producing summons. Penalty on officer detaining bankrupt.

252. Court may adjourn last examination of bankrupt *sine die*.

253. Bankrupt in custody to be brought before the court at the creditors' expense. Assignees may appoint person to attend bankrupt in prison.

254. Bankrupt not surrendering, and submitting to be examined; or not making discovery of his estate and effects; or not delivering up his estate, books, &c.; or concealing, &c., to the value of 10*l.*, guilty of felony, and liable to transportation or imprisonment, with or without hard labour.

255. Court may enlarge the time for bankrupt surrendering himself.

256. As to bankrupts apprehended by warrant.

257. Court required to withdraw such protection in certain cases.

258. Bankrupt destroying or falsifying any of his books, &c., or making false entries,



guilty of a misdemeanor, and liable to imprisonment, with or without hard labour.

259. Bankrupt, within three months of his bankruptcy, having obtained goods on credit under false pretence, or removing, concealing, &c., goods so obtained, guilty of a misdemeanor.

260. Fraudulent grants, &c., by bankrupt, after action commenced, a misdemeanor.

261. Prosecution against bankrupt for any offence under this act may be ordered by the court acting in prosecution of the fiat.

262. Costs of prosecutions of bankrupts may be paid out of "Interest arising from bankruptcy fund account."

263. Penalty on persons concealing bankrupt's effects, 100*l.*, &c. Allowance to persons making discovery thereof.

264. Bankrupt may be discharged by certificate of conformity in manner hereinafter prescribed. Discharge of bankrupt not to release or discharge a partner or person jointly bound.

265. Bankrupt not entitled to certificate if he has lost by gaming 20*l.* in one day, or 200*l.* within twelve months, or 200*l.* by stock-jobbing; or concealed or destroyed books, &c.; or made fraudulent entries; or concealed any property, or permitted fictitious debts to be proved.

266. Mode of obtaining certificate of conformity. *N. B.—Confirmation by the Court of Review is no longer required.* Certificate not to be a discharge unless the court certify a full conformity.

267. Contracts or securities to induce creditors to forbear opposition to be void.

268. Penalty for obtaining money, goods, &c., as an inducement to forbear opposition, or consenting to allowance of certificate.

269. Certificate may be recalled.

270. Bankrupt having obtained his certificate, free from arrest. Certificate to be evidence of the bankruptcy and proceedings. Bankrupt in execution may be ordered to be discharged.

271. Where bankrupt has been bankrupt before, or compounded or taken the benefit of the Insolvent Act, unless 15*s.* in the pound is paid, his future effects shall vest in the assignees, notwithstanding certificate.

272. Bankrupt not liable upon any promise to pay debt discharged by certificate, unless such promise be in writing.

273. Allowance to bankrupt for maintenance.

274. Allowance to bankrupt, 5 per cent., and not exceeding 400*l.*, as soon as 10*s.* paid in the pound; 7½ per cent., and not exceeding 500*l.*, if 12*s.* 6*d.*; 10 per cent., and not exceeding 500*l.*, if 15*s.* Allowance not payable till twelve months after date of fiat, and then only if requisite amount of dividends paid. If at expiration of twelve months the dividends paid be under 10*s.*, bankrupt may be allowed not exceeding 3 per cent., and 300*l.*

275. One partner may receive allowance, though others not entitled.

276. Assignees, in case of surplus, shall account, and pay it to the bankrupt. In case of a surplus, all debts to carry interest.

277. Nine-tenths in number and value of creditors may accept a composition which shall bind the rest.

278. Mode of voting in deciding upon such composition.

279. Repeal of 6 Geo. 4, c. 16, s. 65, so far as relates to estates tail, not to extend to lands of a bankrupt under a commission or fiat issued on or before the 31st of Dec. 1833.

280. The court in the case of an actual tenant in tail becoming bankrupt after the 31st Dec. 1833, by deed, to dispose of the lands of a bankrupt to a purchaser.

281. Court, in case of a tenant in tail entitled to a base fee becoming bankrupt, and of there being no protector, by deed to dispose of the lands of the bankrupt to a purchaser.

282. As to the consent of the protector in case of bankruptcy.

283. As to the enrolment in Chancery of the deed of disposition of freehold lands, and the entry on the court rolls of the deed of disposition of copyhold lands; and of the deed of consent.

284. Subsequent enlargement of base fees created by the disposition of the court.

285. Enlargement of base fees subsequent to the sale or conveyance of the same under the Bankrupt Acts.

286. A voidable estate created in favour of a purchaser by an actual tenant in tail becoming bankrupt, or by a tenant in tail entitled to a base fee becoming bankrupt, confirmed by the disposition of the court, if no protector, or being such with his consent, or on their ceasing to be a protector; but not against a purchaser, without notice.

287. Acts of a bankrupt tenant in tail void against any disposition under this act by the court.

288. Subject to the powers given to the court, and to the estate in the assignees, a bankrupt tenant in tail shall retain his power of disposition.

289. The disposition by the court of the lands of a bankrupt in tail shall, if the bankrupt be dead, have in the cases herein mentioned the same operation as if he were alive.

290. Every disposition by the court of copyhold lands where the estate shall not be equitable to have the same operation as a surrender; and the person to whom such land shall have been disposed of may claim to be admitted on paying the fines, &c.

291. Assignees to recover rents of the lands of a bankrupt, of which the court has power to make disposition, and to enforce covenants, as if entitled to the reversion. This clause to apply to all copyhold lands; but as to other lands, only to such as the court may dispose of after the bankrupt's death. 11 Geo. 2, c. 19.

292. All the provisions of the act in regard to bankrupts shall apply to their lands in Ireland.

293. Deeds relating to the lands of bankrupts in Ireland to be enrolled in the Court of Chancery there.

294. Court may make sale of copyhold lands for the benefit of creditors.

295. Vendees of copyhold lands shall compound with the lord for their fines.

296. Conditional estates granted by the bankrupt may be redeemed.

297. Court may proceed when the bankrupt by fraud makes himself accountant to the crown.

298. Goods in the possession, order, or disposition of the bankrupt may be sold. Proviso for assignments of vessels under 3 & 4 W. 4. c. 55.

299. Bankrupt conveying his lands or goods to others, or delivering securities or transferring debts into other names, void.

300. Distress not to be available for more than one half year's rent due; the landlord to prove for the residue.

301. Bankrupts entitled to leases, or agreements for leases, when not liable for rent of covenants. If assignees decline to determine whether they will accept the lease, the lessor petition.

302. Vendor of any estate in lands may commission assignees to elect whether they will abide or decline the agreement.

303. Assignees may execute powers previously vested in bankrupts.

304. Court may order bankrupt to join in conveyances.

305. Where trustee becomes bankrupt, the court may order conveyance or assignment to other trustees.

306. Where bankrupt beneficially entitled to stock.

307. Titles to property sold under fiat not to be impeached unless proceedings taken to annul within the periods hereinbefore limited.

308. All contracts, &c. *bonâ fide* made by and with any bankrupt previous to the date and issuing of the fiat to be valid, &c. if no notice of prior bankruptcy.

309. Bodies politic, &c. deemed to have notice, if persons acting on their behalf had notice.

310. Purchases from bankrupts not to be impeached unless fiat is sued out within 12 months.

311. In case of traders deceased without legal personal representative, fiat may issue.

312. Petitioning creditor. Fiat.

313. Warrant to issue.

314. The messenger empowered to take charge of the goods of such trader.

315. If a legal personal representative of such deceased trader not constituted within two months, &c., an official assignee may be appointed, who may take out administration, and proceed as under a fiat issued in trader's life.

316. Costs of fiat against deceased trader.

317. Limitation of actions. General issue. Double costs.

318. Commencement of this act.

319. Act may be altered this session.

## COMMITTEE OF INQUIRY INTO THE TAXES ON ADMINISTERING JUSTICE.

WE have for many years advocated the right of the suitors of our courts of justice to be relieved from the excessive burdens by which they have been oppressed, from the levying of fees at every stage of a cause, for the purpose of paying not only the judges and masters and other useful officers, but a host of clerks whose sole vocation is the collecting these imposts.

At length, it seems, there is a reasonable prospect of an abatement of the evil, and we hope of its ultimate removal. On Tuesday last, the 4th instant, the motion for a select committee to inquire into the subject was brought on.

Mr. *Watson* moved for a "Select Committee to inquire into and report to the house on the taxation of suitors in the courts of law and equity by the collection of fees and the amount thereof, and the mode of collection; and the appropriation of fees in the courts of law and equity, and in all inferior courts, and in the courts of special and general sessions in England and Wales; and as to the salaries and compensations and fees received by officers and retired officers of those courts; and whether any and what means could be adopted with a view of superintending and regulating the collection and appropriation thereof." He said that as there was no objection to the motion, he should not go into the subject of it at any great length. The question was one of deep importance and of the greatest magnitude. Under the existing system, an advantage was absolutely given to the dishonest. The expense of litigation in courts of justice shut the door to a great number of litigants. Many of the fees were of no legal origin, but had sprung up by accident, and by the course of time. The courts of law, indeed, might, in regard of fees, be said to be like a bush, which, when the sheep sought it as a refuge from the weather, deprived them of all their fleece. But what was very remarkable was, that of four hundred or five hundred persons collecting fees in these courts, scarcely any one knew why or for whom they collected, and upon scarcely one of them was there any check as respected the collection. In some cases the parties collected for themselves, in others for the Consolidated Fund. Whether the fees paid to each were honestly received and honestly accounted for nobody could decide.

In the Court of Chancery, immediately a party commenced a suit he was called upon to pay a heavy fee, and this continued at every stage of proceedings until the last step, when, strange to say, there was a tax upon the suitor, not dependent upon the amount litigated, but

upon the size of his bill. In the courts of equity, in 1845, fees to the extent of 96,297*l.* were paid to the Suitors' Fund, and 155,510*l.* to the Suitors' Fee Fund, making a total of 250,807*l.* Here was an enormous amount to be collected, without there being the least possible check upon fraud.

As to the courts of law, the system was even still more objectionable. To such an extent had taxation gone, that in the year 1843, in the three Courts of Queen's Bench, Common Pleas, and Exchequer, there had been collected and transferred to the public service, after payment of all salaries, charges, and expenses, no less a balance than 100,981*l.* When an attempt was made to put a stamp duty upon law proceedings, Mr. Canning said in that house, that nothing in all the system of taxation could be more objectionable than an attempt to tax the suitors of justice. In his (Mr. Watson's) view, the objectionable character of the proceeding was increased by the consideration that the suitors get nothing for their money.

There were at the present time as great delays in the courts of justice as there ever were. We have no more judges now than in the reigns of Elizabeth, or even Edward III.; and when the public were receiving from the suitors this enormous annual amount of fees, the suitors surely had a right to claim that steps should be taken to secure every facility for the termination of their causes. The attempts which had been made in this direction of recent years, were, according to his view, all in the wrong direction. Instead of increasing the labours of the judges we possessed, we should lighten their burden, by appointing others to assist them. But he should remark, before he concluded, that the courts of law and equity were not the only courts in which large fees were collected.

From the Fee Fund of the Court of Bankruptcy salaries were paid to the amount of 49,000*l.*, and compensations to the amount of 46,000*l.*, per annum. In lunacy and other proceedings the fees were also enormous; and they were taken without any check or control. And here he could not but observe that a serious question presented itself,—how far it was right or proper, in courts of justice, to levy fees at all? He would, however, pass by that point, in order to direct their attention to the other matters which he wished the committee to consider. One was, as to the amount of the officers' salaries; and another was, as to the compensations, now paid out of the fee fund. There could be no doubt that we ought to have a sufficient supply of fairly-paid officers in our courts; it was also right that on the loss of office proper compensation should be given; but it was a great question if our law officers at present were not greatly overpaid, and whether the compensations they received were not enormous and most disproportionate to the fees of the offices they had held. Why, there were absolutely some persons, inferior officers, who were now receiving,

for the loss of their respective posts, no less a sum than 7,500*l.* per annum! But he would not trespass upon the house further than to say, in conclusion, that he really thought much public benefit might be made to result from such an inquiry as the present. Another part of the investigation which he asked for related to the subject of compensations; but as he understood there was an objection to that portion, he should not press it now, reserving to himself the right at any future period of making a proposal on the subject.

Mr. Romilly seconded the motion, believing that the most effectual way of reforming the administration of the law was to render it as cheap and easy as possible to the suitor. They did an injury and a wrong where they made the suitor pay heavily for the administration of justice, and for putting in force the machinery of the law. Some people thought that suitors should be made to pay because they were the parties concerned in the causes litigated; but this was a fallacy; for to preserve the rights of property, and the due administration of the law, was a matter in which the public at large were interested; and to throw on suitors the administration of the laws from which they sought assistance, would be akin to throwing the cost of a police upon those whose houses and property were plundered. The public obtained the benefit by the administration of laws, and the public, consequently, ought to bear the cost. A question arose which of two innocent persons ought to bear a loss—what construction ought to be put upon the wording of an act of parliament—how far a dictum of some celebrated lawyer applied under some slightly altered state of facts—how far words which the suitor had never seen or heard of applied to the special circumstances of his particular position? Why, it was for the public advantage that these matters should be properly decided—it was for their advantage that a due interpretation of the laws should be given—and if so, surely we had no right to throw the costs of obtaining such interpretation and such decision, not upon the public to be benefited, but upon two unfortunate parties, both of whom might, and frequently were, innocent of any wrong.

Well, then, another point which he hoped to see arise out of such a committee as that now moved for, was the desirability of appointing a minister of justice. At present we threw the administration of our laws upon the Lord Chancellor and the Secretary of State. Why, imposing the consideration of such subjects upon such officers was only saying to them, forego the discharge of other and equally important duties. So strongly did he feel upon this point, that had it not been for his dislike to bring abstract questions before parliament, he should have long since submitted the subject of a minister of justice to the consideration of the house. It was necessary for the administration of justice that we should have regular returns, and those returns could only be

secured by the appointment of a minister. A minister was also required to watch the practice of the laws, and to determine what reforms were required to secure their practical and efficient working.

Let them take the case of the new courts which they had lately constituted. Here there were some fifty or sixty judges, all appointed to administer a new law. How great would be the advantage of a public minister who could secure impartiality in that administration, and direct it practically for the benefit of the people. Another great advantage of such a minister would be, that they should get rid of "commissions" to examine into the state of the law, of which they had had so many of recent years, entailing great expense upon the country, and putting on paper crude theories which were seldom or never carried out in practice. These would be some of the advantages of a minister of justice.

Another of the great services which this committee could render would be, as his honourable and learned friend had said, to put a check upon the present fee system. There could be no doubt that it was open to the greatest and most flagrant abuses. The fee receiver at present was only required, at the expiration of the year, to make oath that the sum he paid into the Exchequer was the sum properly payable. That was really the only check upon him. Why, he (Mr. Romilly) did say that they had no right to subject a public officer to such a temptation. Not long ago a case occurred which showed the working of this system in a peculiar point of view. An officer who received fees in one of the courts

died. His successor, at the expiration of the first year of his appointment, though there was no sensible or visible increase in the business of his office, paid to the Exchequer just one-half more on account of the year's fees than had been paid at any previous period. What he urged was, that they should appoint a searching committee, which should elicit facts of this description—which should apply its investigations to all courts, high and low, and report upon the taxation to which the people, rich and poor, who sought our courts of law were subjected by fees.

The *Attorney-General* said that he had no objection to grant the committee in the terms which his hon. and learned friend's motion had now assumed, omitting all reference to the subject of compensations; and pledging the government, at the same time, to second the views of the hon. and learned gentleman respecting costs, except such as the required investigation might show it desirable to adopt.

A select committee was then appointed,

"To inquire into and report to the house on the taxation of suitors in the courts of law and equity by the collection of fees, and the amount thereof, and the mode of collection; and the appropriation of fees in the courts of law and equity, and in all inferior courts, and in the courts of special and general sessions in England and Wales; and as to the salaries and fees received by officers of those courts; and whether any and what means could be adopted, with a view of superintending and regulating the collection and appropriation thereof."

## ATTORNEYS TO BE ADMITTED,

*Trinity Term, 1847.*

### Queen's Bench.

#### *Clerks' Names and Residences.*

#### *To whom Articled, Assigned, &c.*

Archer, Joseph, 43 A, Lamb's Conduit Street; and Andover  
Allix, Wager Townley, 11, Princes' Street, Cavendish Square; and Lincoln's Inn Fields  
Alexander, Gordon, 6, Cork Street  
Attenborough, Winfield, 68, Oxford Street  
Ashley, William Edward, 31, College Street, Chelsea; 2, Brompton Terrace, Queen's Buildings, Brompton; and 8, Elizabeth Street, Brompton  
Allaway, James, Reading  
Allan, Edward, 50, Upper Norton St., Fitzroy Square; and Drapers' Hall  
Andrew, Robert, 37, Rathbone Place, Oxford Street; and Doncaster  
Boyle, Charles, 43, Gillingham Street, Pimlico; Edgbaston; and Bower Belgrave Place  
Baynes, Walter Francis, 25, Portland Place  
Barras, Henry, Grenville Street; and Farn-Acres, near Gateshead  
Burridge, William Edward, 2, Regent's Place West, Regent Square; and Shaftesbury

Harry Footner, Andover  
George Rooper, Lincoln's Inn Fields  
Messrs. Frere and Co., Lincoln's Inn  
George Burnham, Wellingborough  
John Would Lee, Newark-upon-Trent  
John Jackson Blandy, Reading  
John Lawford, Drapers' Hall  
Edward Sheardown, Doncaster  
John Clarke Chaplin, Birmingham  
W. Prideaux, Foster Lane  
Ralph Walters, Newcastle-upon-Tyne  
William Burridge, Shaftesbury

Bourne, Septimus, 63, Guildford St., Russell Square; Castle Donnington; and Little Saint James Street	Messrs. Bourne, Alford Marcus Huish, Castle Donnington Henry Whitmarsh, Battle F. L. Barnwell, Lincoln's Inn Fields
Bellingham, Charles Eudo, 3, Cranmer Place, Lambeth; and South Square, Gray's Inn	William Braikenridge, Bartlett's Buildings
Braikenridge, Frs. Jerdone, Bush Hill, Edmonton; and 16, Bartlett's Buildings	John Baker, Aldwick Court John William Ward, Newcastle-under-Lyne
Baker, Samuel Edward, 27, Southampton Row, Russell Square; and Aldwick Court, Blagdon	William Pashley Milner, Sheffield
Berry, John Johnson, Stoke-upon Trent	Charles Brookfield, Sheffield C. A. Brookfield, Bedford Row
Burgon, William, Marlborough; and 14, Goulden Terrace, Islington	John Bagshaw, Manchester
Brookfield, F. Morris Preston; 7, Cumming Street, Pentonville; and Goulden Terrace, Islington	Nicholas Lanwarne, Hereford John Lofthouse, Leeds Henry Brown, Wakefield
Bagshaw, Thomas Pittard, Manchester	William Henry Cotterill, Throgmorton Street
Blackmore, Hugh Haywood, 12, River Street, Myddleton Square; and 18, Gerrard St.	F. Hawksley Cartwright, Bawtry
Brown, Robert Harrison, Wakefield	Messrs. Smith, Crediton
Cotterill, James Hardman, 32, Throgmorton Street	Thomas Slaney, Birmingham George Cox, Sise Lane Henry Daubney Harvey, Chard
Clough, Benjamin Morley, 71, Harrison St., Regent Square; and Bawtry	P. Eaton Coates, Stanton Court
Cleave, William Cornish, 13, Stanhope Street, Regent's Park; Crediton	Thomas Sturton, Holbeach
Cutler, John Walford, 14, New Ormond St., Calthorpe Street; and Birmingham	John Gilbert Chilcott, Truro John Edward Elworthy, Devonport Nicholas Were, Plymouth
Cox, Frederick John, 14, Sise Lane	J. M. Clabon, 35 A, Gt. Geo. St., Westminster
Clarke, Edward, 40, Craven Street, Strand	Robert Cook, Bath
Coates, Wallington, 19, Featherstone Buildings; and Stanton Court	Rayner Winterbotham, Cheltenham T. E. Parson, Lincoln's Inn Fields
Chapman, William Emerson, 8 Arthur Street, Gray's Inn Road; and Holbeach	William Dickson, sen., Alnwick James Lane, Chancery Lane Joseph Wainwright, Wakefield M. Haywood Williams, Bridgenorth
Chilcott, Edward, 43, Gower Place, Euston Square; and Truro	Thomas Morris, Warwick
Campbell, James, 79, Blackfriars' Road, Southwark; and Plymouth	Frederic Ouvry, Tokenhouse Yard
Clabon, Edward, 76, Mark Lane	J. J. J. Sudlow, jun., Chancery Lane
Collins, Charles Atkins, 23, Southampton Row, Russell Square; Bath; Lloyd Sq.; and Great Ormond Street	T. F. A. Burnaby, Newark-upon-Trent Matthew John Rippingham, and William Rose, Great Breccot Street
Colt, George Nathaniel, Cambridge; Cheltenham; Liverpool; Chester Place; and Southampton Row	James Neville, Blackburn Thomas Cadle, Newent, Gloucester
Dickson, William, jun., 12, Soley Terrace, Pentonville; and Alnwick	Edward Wright, Birmingham
Duffett, Henry, 12, New Street, Kennington	
Dalby, Jesse, Wakefield	
Dallewy, John, Bouverie St.; and Bridgenorth	
Dodd, Edward, 63, Charrington St., Somers' Town; and Warwick	
Duncan, William H. Egelstone, Foxley House, Kennington	
Dickson, Winfield Pennington, Notting Hill; and Chancery Lane	
Eagleton, John William, Newark-upon-Trent; Arthur Street; and Belton	
Eagleton, Octavius Chapman Tryon, Montpelier Row, Blackheath	
Eastham, Richard, 12, Egremont Place, New Road; 4, Englefield Road, Kingsland; and Blackburn	
Edmonds, Edmund, Crooke's House, Pauntley	
Edmonds, George, 15, Whittall Street, Birmingham	

[This List will be continued in our next.]

\* This applicant has given notice both in the Queen's Bench and Common Pleas.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

## Law of Costs.

[UNDER this head, we have arranged the decisions on Costs between party and party. In our last number, p. 8, *ante*, will be found many decisions relating to Costs between solicitor and client, and the taxation of such costs.]

## ADMINISTRATION SUIT.

1. *Real and personal estate*.—The plaintiffs, stating themselves and some of the defendants, to be next of kin, filed a bill for the administration of a testator's estate. Their claim was displaced upon inquiries directed by the court, and other persons, not parties to the cause, established their right and became entitled to a large residue. The case being one of great difficulty and doubt, and an investigation being absolutely necessary for the administration of the estate, the plaintiffs and defendants were allowed their costs out of the fund. Costs of suit apportioned between real and personal estate. *Johnston v. Todd*, 8 Beav. 489.

2. Under intricate circumstances arising from events not contemplated by the testator, the costs of an administration suit were ordered to be paid rateably out of the realty and personally according to their value. *Christian v. Foster and Bunnett v. Foster*, 33 L. O. 209.

## AFFIDAVIT.

*Motion*.—It is not necessary that all the affidavits filed on a motion should be read, in order to entitle the successful party to the costs of them. *Frier v. Rimmer*, 14 Sim. 391.

## APPEAL.

A defendant having been ordered to pay costs, he appealed. A motion, that upon payment of the amount into court, proceedings to compel payment might be stayed, pending the appeal, on the ground that the plaintiff would be unable to repay them, was refused. *Archer v. Hudson*, 8 Beav. 321.

## BANKRUPTCY FEES.

Where a bankrupt had obtained his certificate, and the fees of the official assignee and of the messenger had been paid, but no creditors' assignee had been chosen, the solicitor to the fiat had a bill of costs, and applied that the same might be paid out of a sum of money standing to the credit of the bankrupt's estate. *Held*, that the fees of 10*l.* and 20*l.* directed by the stat. 1 & 2 W. 4, c. 56, were payable before the solicitor's bill was paid, and the petition was dismissed. *Ex parte Henbury, re Cavendish*, 33 L. O. 407.

## CREDITOR'S SUIT.

*Staying proceedings*.—Bill in a creditor's suit dismissed, on motion by defendant before decree, on payment of the debt, with interest at four per cent., and costs. *Manton v. Roe*, 14 353.

## DEMURRER.

See *Pauper*, 2.

## DISCOVERY.

*Order 125 of Orders of 1845*.—It is not a sufficient reason for refusing to a successful defendant the costs of a bill of discovery, that he has asked for a discovery of many matters of which he has not been able to make use in his defence. *Robinson v. Wall*, 33 L. O. 303.

## DISMISSAL OF BILL.

*Replication*.—*Notice of motion*.—Where defendants gave notice of motion to dismiss the bill, but such notice was given for a day not being a seal-day, and previously to the seal-day, replication was filed: *Held*, that the defendant was not entitled to the costs of the motion, the notice being irregular. *Steedman v. Poole*, 33 L. O. 113.

## EVIDENCE.

*Witness*.—*Solicitor and client*.—*Voluntary settlement*.—Voluntary settlement by a younger sister, of the whole of her present and future property principally in favour of her eldest sister, set aside, the eldest sister having obtained great ascendancy and influence over the younger, the circumstances of the transaction being open to suspicion, the settlement being very improvident, and the settlor not having had the benefit of independent professional advice.

A solicitor acted for both parties in the matter of a voluntary settlement, which was set aside for undue influence. He was made a defendant to the suit for that purpose. The court, though exonerating him from culpability in the matter, made him bear his own costs, because he had not acted with proper prudence in the matter.

Solicitors are justified in obtaining from a witness, prior to his examination, a statement of the facts, but it is improper to obtain a statement upon oath, unless required for the purposes of the cause.

Plaintiffs entitled to the general costs of the suit, deprived of the costs subsequent to the replication, on the ground that they had entered into a mass of unnecessary evidence. *Harvey v. Mount*, 8 Beav. 439.

## EXECUTOR.

*Legacy*.—A party was unable to obtain payment of his legacy and his portion of the residue without suit. The case being clear, and the remaining portion of the residue having been paid by the executor, he was charged with costs. *Curtis v. Robinson*, 8 Beav. 242.

## INJUNCTION.

1. A party will not be restrained from recovering such portion of his law costs as may have been incurred in proceeding under a breach of a subsequently dissolved injunction of this court. *Newman v. Ring and Others*, 33 L. O. 90.

2. Where an injunction has been properly obtained, but the purpose for which it was obtained has been answered, the court will not

give the plaintiff the costs of the application for the injunction, but the costs of the suit also. *Larpernt v. Richmond Railway Company*, 33 L. O. 91.

## LEGATEE.

**Solicitor.**—A legatee has a clear right to have a satisfactory explanation of the state of the testator's assets, and an inspection of the accounts, but he is not entitled to a copy thereof at the expense of the estate.

An estate was represented to a legatee by the personal representatives as barely sufficient to pay the debts, but the accounts were not shown. A bill was filed, and afterwards an offer was made to produce the accounts, which was declined. Ultimately, a small surplus was ascertained to exist, and to be due from the representatives, but which was totally insufficient to pay the legacies, which were of a very considerable amount. The court disapproved of the litigation, and gave the plaintiff no costs; but directed the representatives to retain their balance in discharge of their costs. Duty of solicitors to check useless litigation. *Ottley v. Gilby*, 8 Beav. 602.

And see *Executor*.

## LESSEE.

The lessee having recovered damages upon the covenant in the action directed by the court, to which the devisees were parties, was held entitled, as against the devisees, to the amount of such damages,—to his costs of the ejectment,—of the action brought against the executors,—of the action on the covenant to which the devisees were parties, and of the suit; and also, to interest on the damages and costs, to be computed from the time the amount was ascertained and judgment entered up in the action to which the devisees were parties. *Morse v. Tucker*, 5 Hare, 79.

Case cited in the judgment: *Hyde v. Price*, 8 Sim. 578.

## MORTGAGE.

**Power of sale.**—*Oppressively exercised.*—Sale under a power of sale contained in a mortgage deed, the power being proved to have been oppressively exercised by the mortgagee, set aside with costs as against the mortgagee. *Matthie v. Edwards*, 2 Coll. 465.

## NOTICE OF MOTION.

See *Dismissal of Bill*.

## NOTICE OF TAXATION.

1. *When waived.*—No notice of taxation is necessary where the plaintiff appears for the defendant sec. stat., although the defendant's attorney afterwards takes out and serves a summons for time to plead. Such summons is not tantamount to an appearance, within the rule of Hilary Term, 4 W. 4, s. 17. *Welch v. Vickery*, 15 M. & W. 59.

Case cited in the judgment: *Pope v. Mann*, 2 M. & W. 881.

2. *Setting aside judgment.*—*Quere*, whether a judgment in debt by default, signed without notice of taxation, is irregular.

But a judgment so signed was set aside without costs, upon an affidavit of merits. *Ilderton v. Sill*, 2 C. B. 249.

## PAUPER.

1. The court will not compel a pauper to pay costs by reason of his giving a notice of trial which he afterwards duly countermanded. A notice of trial duly countermanded is the same as if none had been given. *Doe dem. Pugh v. Price*, 33 L. O. 355.

2. The court will not allow, as a matter of right, that a plaintiff who sues *in forma pauperis* shall amend the declaration, after special demurrer thereto, without payment of costs. *Foster v. Bank of England*, 6 Q. B. 878.

## PAYMENT INTO COURT.

Where a defendant pays money into court in respect of part of the plaintiff's claim, and the plaintiff accepts such payment in satisfaction, and there are other pleas to the residue of the claim upon which issues are joined and found for the defendant, the plaintiff is, nevertheless, entitled to all the costs relating to the payment into court. *Harrison v. Watt*, 33 L. O. 456.

## REPLICATION.

See *Dismissal of Bill*.

## SECURITY FOR COSTS.

1. If a plaintiff goes to reside out of the jurisdiction, the court will order that he give security for costs, or that the bill be dismissed within a limited time, but will not make any order as to the costs of the suit. *Giddings v. Giddings*, 33 L. O. 501.

2. Where a plaintiff is bankrupt or insolvent, and has assigned the debt for which the action is brought, and is suing for the benefit of the assignee, the court will require security for costs. *Perkins v. Adcock*, 14 M. & W. 808.

3. The fact of the plaintiffs having compounded with their creditors, and one of them being resident abroad, is no ground for calling upon them to give security for costs. *Thornel v. Roelants*, 2 C. B. 290.

## SET-OFF.

An order that, in setting off costs due from a plaintiff to a defendant against costs due from that defendant to the plaintiff, costs due to the plaintiff from that defendant and another should be included is not a common order, but must be specially asked for. *Duncombe v. Levy*, 33 L. O. 284.

## SETTING ASIDE EXECUTION.

In trespass for taking plaintiff's goods in execution under a warrant of attorney and judgment which were afterwards set aside as illegal, the plaintiff cannot claim as part of the damage his costs incurred in vacating the warrant of attorney and judgment. *Holloway v. Turner*, 6 Q. B. 928.

See *Notice of Taxation*, 2.

## SHOWING CAUSE.

A party who successfully shows cause in the



first instance is entitled to costs in cases where a rule *nisi* would, if granted, have operated to his prejudice. *Rennie v. Beresford*, 3 D. & L. 464; *Higgins v. Ede*, 3 D. & L. 470.

## SOLICITOR AND CLIENT.

See *Evidence ; Legatee.*

## SUIT FOR COSTS.

Where the demand of the plaintiff is submitted to, and the only question between the parties is the costs of the suit, the cause ought not to be proceeded in, but an application ought to be made to the court to prevent the expense of further proceeding. *Sivell v. Abraham*, 8 Beav. 598.

## TAXATION OF COSTS.

See *Notice of Taxation.*

## TENDER.

Where, after writ issued, the defendant applies to a judge to stay proceedings on payment of a certain sum and costs, and the plaintiff refuses to accept the sum offered, alleging that more is due, but at the trial recovers no more, he is entitled to full costs, unless the amount offered has been paid into court. *Clark v. Dann*, 3 D. & L. 513.

## VENDOR AND PURCHASER.

A defence to a bill for the specific performance of a contract for the sale of a leasehold estate, (upon an allegation that the vendor had employed puffers at the sale,) having failed, and a reference being made to the Master to inquire as to the title, the defendant (the purchaser) objected to the title upon the ground that fulfilment of a covenant to insure had not been proved, nor any waiver shown, supposing a breach had been committed. A waiver being produced, and the Master having reported in favour of the title shown in February, 1846, the cause having been heard in November, 1845, *Held*, that all costs subsequent to the decree for reference ought to be paid by the defendant. *Woodward v. Miller*, 33 L. O. 452.

## WITNESS.

If a plaintiff examines a defendant as a witness, he must pay the defendant's costs of the suit. *Duke of Leeds v. Lord Amhurst*, 14 Sim. 357.

See *Evidence.*

[The decisions, as well on the Law of Costs, as of Attorneys and Solicitors, are selected both from the law and equity reports, because it is more useful and convenient to bring all the points under one view. On other subjects the cases are arranged according to the courts wherein they have been decided.]

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

## Lord Chancellor.

*Landor v. Parr.* March 26th, 1847.

## REMOVAL OF NEXT FRIEND.—SECURITY FOR COSTS.

*In a suit in which one of the plaintiffs, all of whom were out of the jurisdiction, appeared by her next friend, an order to substitute a new next friend for the then existing one, alleged to be a person of insufficient substance, and a menial servant of the solicitor who conducted the suit, and was also a defendant, or to give security for costs, was varied by allowing such next friend to continue security for costs being given by consent.*

*Quære, whether a defendant can demand security for costs in a case where all the plaintiffs are beyond the jurisdiction of the court, but one of whom, not being an infant, appears by a next friend within the jurisdiction.*

Mr. Stuart and Mr. Welford stated, that in this suit the bill had been filed by a married woman by her next friend on behalf of herself and her children against the trustees of her marriage settlement, and the bill alleged certain breaches of trust. The plaintiff had been in reduced circumstances, and her next friend was a cook in the service of Mr. Gedye, the solicitor for the plaintiff, and also a defendant in the cause. Mr. Gedye's interest in the suit arose from his having advanced a sum of money on the reversionary interest of the plaintiff and her children in the fund in question. All the plaintiffs were out of the jurisdiction, and the Master of the Rolls, on the motion of one of the defendants, had ordered all proceedings to be stayed until a new next friend should be appointed, or security given for the costs. The learned counsel urged, that such removal would be tantamount to putting an end to the suit; that the next friend was a person of some means, being in the receipt of wages and possessing money in the savings' bank; that the bill had been filed *bonâ fide*; and that nothing could be alleged against the conduct of Mr. Gedye. They cited *Anon.* 1 Ves. jun., 409; *Ogilvie v. Hearne*, 11 Ves. 598; *Dowden v. Hook*, 8 Beav. 399, and the cases there referred to.

Mr. Freeling said, that the order of the Master of the Rolls had been made upon the ground that the solicitor had caused a bill to be filed for his own benefit, and submitted, that under the circumstances, his lordship's order ought to be sustained.

The Lord Chancellor, having remarked that the defendants were protected by the court in requiring security for costs to be given whilst the plaintiffs were out of its jurisdiction, and that, of course, it could not intend such security



to be merely nominal, asked if there was any case which decided that the necessity of giving security for costs by plaintiffs abroad was obviated by the fact that one of them appeared by a next friend: it being stated at the bar that no such authority occurred to the counsel, his lordship observed, that he could see nothing against the present next friend, who seemed to have been actuated by real friendship; nor could he see anything against the conduct of the solicitor, whose interest in the result arose from his interest in the cause, and who might notwithstanding be well disposed to do justice to his clients; but his lordship thought the best course would be to discharge so much of the order appealed against as directed the substitution of a new next friend, and that security for costs should be given by consent.

As the order of the Master of the Rolls was varied, Mr. Freeling's application for costs was not granted.

### Rolls Court.

#### *Pattison v. Hawksworth.*

#### LEGACY.—PRESUMPTION OF SATISFACTION.

*After the lapse of several years without claim or payment on account, the court will presume a legacy to be satisfied, although the benefit of the Statute of Limitations may not have been taken by the answer.*

THE testator, Martin Hawksworth, by his will, dated in January, 1815, gave to his wife, Grace Hawksworth, for her life, an annuity of 25*l.*, and also 70*l.* to be paid within one month after his decease. He also gave to his daughters, the plaintiff, and Ellen Pattison, legacies of 1,550*l.* each.

The testator died in May, 1815, and his will was proved in June, 1815, shortly after which the defendant, as his executor, realized his assets, and, as was alleged by the answer, paid legacies and debts (including the two legacies of 1,550*l.*) to the amount of 3,821*l.*, although the testator's personal estate produced only 3,342*l.*

The testator's widow died on the 18th of June, 1843, having by her will appointed the plaintiff her sole executrix and residuary legatee, who instituted this suit to recover the legacy and arrears of the annuity bequeathed to her mother by the testator's will, which she alleged had never been paid.

Mr. Barrett for the plaintiff.

Mr. Kindersley and Mr. Acworth, for the defendant, urged, that although the benefit of the Statute of Limitations was not claimed, the court would allow the objection, and that was an answer to the plaintiff's claim, independently of which the court would not take notice of so stale a demand.

Mr. Barrett, in reply, said, that in *Harrison v. Rowell*, 10 Sim. 362, the Vice-Chancellor of England held, that a defendant cannot take advantage of the Statute of Limitations without claiming the benefit of it by his answer. He also referred to *Barnard v. Pinfritt*, 5 Myl. &

Cr. 63, to show that the admission of assets to one legatee by an executor was an admission to all.

The Master of the Rolls said, it was clear that no claim was made until many years after the death of the testator. His lordship then referred to the dates of the testator's death and of the proof of his will, and added, that after so great a lapse of time the legacy and annuity must be presumed to be satisfied; that alone was sufficient ground for dismissing the bill.

Bill dismissed with costs.

### Vice-Chancellor of England.

#### *Gatland v. Tanner.*

#### DEMURRER.—CONSTRUCTION OF 38TH ORDER OF AUGUST, 1841.

*Where a bill is generally demurrable, a defendant may, under the 38th Order of August, 1841, decline to answer any parts of the bill that he may not choose to answer, although he may have answered several other parts.*

THE suit in this case was instituted to recover possession of an estate which was claimed by the plaintiff as the right heir of the testator named in the pleadings, who had created an estate tail in the estate, with an ultimate limitation in favour of his right heirs. The defendant answered a considerable portion of the bill, and then stated that the plaintiff's claim was barred by a recovery suffered by the tenant in tail through whom he, the defendant, claimed, but declined stating the particulars of the recovery, or giving any further answer, and claimed the benefit of the 38th Order. To this answer the plaintiff filed exceptions, all of which, after considerable discussion, were allowed by the Master, and the matter was now argued upon exceptions to his report.

Mr. Bethell and Mr. Lewin, for the defendant, urged, that inasmuch as the bill was generally demurrable, the defendant was not bound to answer any part of it, and cited *Tipping v. Clarke*, 2 Hare, 392; *Mason v. Wakeman*, 10 Jur. 628.

Mr. Cooper and Mr. Miller, contra, urged,—1st, that the bill was not demurrable, and that even if it were, the 38th Order of August 1841, did not admit of the construction sought to be put upon it by the defendant. The Vice-Chancellor Bruce and nearly all the Masters were opposed to such a construction.

The Vice-Chancellor said, that he had consulted both Vice-Chancellor Bruce and Vice-Chancellor Wigram, before giving his judgment in *Mason v. Wakeman*, and although the opinions of those learned judges differed, he considered that as Vice-Chancellor Wigram was more cognizant of the intention of those who framed the orders, his opinion upon a question of construction, his Honour thought, should be preferred. He should therefore allow the exceptions to the report.

Vice-Chancellor Wigram.

*Hughes v. Williams.* Feb. 24th, 1847.

MASTER'S ORDER.—IRREGULARITY.—  
COSTS.—116TH ORDER OF MAY, 1845.

*The court refused to strike out a cause from the registrar's book, on the ground that it had been improperly set down before publication, inasmuch as an order of the Master which was irregular and had been treated as a nullity, ought not to have been so treated so long as it remained undischarged.*

*The defendant who had obtained the irregular order was allowed his costs, having been improperly made a party to the motion.*

Mr. Wood, (with whom was Mr. Shapter,) moved that this cause, which had been set down at the instance of one of the defendants (De Winton) might be ordered to be struck out of the registrar's book, having been improperly set down before publication had passed; that the subpoena to hear judgment issued in the cause and bearing date the 9th day of February instant, together with the service thereof respectively, might be set aside; and that either the defendants at whose instance the cause had been set down, or the defendant Lawrence, might pay the costs of this application, and all costs, consequent thereupon. The facts appeared to be these:—On the 7th of January last, publication in the cause had passed. On the same day, one of the defendants (Lawrence) obtained a warrant, returnable on the 11th, to attend application to enlarge. This warrant was served upon the plaintiff, but was not served upon the other defendants. On the 11th the Master enlarged publication until the 20th of February; the plaintiff and Lawrence attended the Master on this occasion, but not the defendant De Winton, who threatened to dismiss for want of prosecution. The plaintiff wrote, on the 18th of January, informing the defendants of the order of the 11th, enlarging publication. Notwithstanding this notice, the defendants, the De Wintons, (pursuant to the 116th of the General Orders of May, 1845,) set down the cause for hearing on the 9th of February, and issued subpoena to hear judgment. In support of the motion, it was admitted that it might be urged that the Master had no jurisdiction to give leave to examine witnesses after publication had passed, and that even supposing the Master had jurisdiction, one defendant could not regularly obtain the order without notice to his co-defendants, by service of the warrants upon them. But, it was submitted that the plaintiff was not blameable, it being his duty to treat the Master's order as regular until it was set aside, and that all the defendants were also bound to do so. As to the costs of the motion, it was not material whether they were paid by the defendants, the De Wintons, who had disregarded the Master's order, or the defendant, Lawrence, who had erroneously obtained it. The motion was in the alternative, but, it was submitted that the De Wintons, (by whose conduct, in particular, the motion had been rendered necessary,) were primarily

liable to pay the costs. *Carr v. Appleyard*, 2 Myl. & Cr. 476; *Brydges v. Bramhill*, 9 Sim. 643; *Chuck v. Cremer*, 2 Phillips, 113.<sup>b</sup>

Mr. Chandless, for the defendant Lawrence, asked for his costs.

Mr. Freeling, on behalf of the De Wintons. The Master clearly had no jurisdiction; and the defendants, the De Wintons, were entitled to treat his order as a nullity. It was true, that, on the 18th of January, the De Wintons had been informed by letter of the order in question, but they had not been served with it, and they could not be deemed to have legal knowledge of it. The cause had been set down only as between the plaintiff and the defendants, the De Wintons, but not as to the defendant, Lawrence, as to whom, as he had been brought before the court unnecessarily, upon this motion, the plaintiff must pay his costs.

Sir James Wigram, V. C. I cannot enter into the question, whether the irregularity of the Master's Order of the 11th of January was more or less obvious. The regularity or irregularity of the order is immaterial. Here is the order, of which, on the 18th of January, the defendants, the De Wintons, had notice, and until the order was set aside, they were bound to respect it. Lawrence must be paid his costs of this motion. It is true he obtained the order, but that order is good until set aside, and the plaintiff is proceeding upon it as a valid order. As he is unnecessarily brought before the court, the plaintiff must pay him his costs.<sup>c</sup>

### Queen's Bench.

(Before the Four Judges.)

*Bulmer v. Bousfield.* Hilary Term, 1847.

PLEADING.—SEPARATE COUNTS UNDER NEW RULES.

*A surveyor contracts for the performance of certain surveys for a railway, payment to be made by instalments, the two first at certain fixed periods, the third when the plans and sections are deposited, and the last when it is certified that the standing orders of the House of Commons have been complied with. In an action on the contract by the surveyor, a count on the special contract, and the common count for work and labour, are allowable under the Reg. Gen. H. T. 4 W. 4, rule 5.*

THIS was an action of assumpsit by a railway surveyor. The declaration consisted of two counts, one upon a special contract, and the other for work and labour, and materials provided. The plaintiff was employed to survey a district preparatory to an application to parliament, and an agreement was entered into that the plaintiff was to be paid by instalments, the two first at certain periods specified in the

<sup>a</sup> 14 L. O. 354.

<sup>b</sup> 33 L. O. 112.

<sup>c</sup> On the 26th of March, 1847, the De Wintons appealed from so much of the order as related to them. The Lord Chancellor dismissed the motion with costs.

agreement, the third when the plans and sections were deposited, and the last when it was certified that the standing orders of the House of Commons had been complied with. On this state of fact, on application to Mr. Justice Erle at chambers, he made an order that one of the counts in this declaration should be struck out as being in apparent violation of the new rules of pleading, one of which being, that several counts shall not be allowed, unless a distinct subject-matter of complaint is intended to be established in respect of each. A rule *nisi* was obtained to set aside the judge's order.

Mr. Brown showed cause, and contended, that all the instalments mentioned in the declaration might be recovered under the count for work and labour, or on the *quantum meruit*, if the work had been performed. This case is similar in principle to the one mentioned in the new rules, that counts upon a demise and for use and occupation of the same land for the same time are not to be allowed.

Mr. Peacock contra. The nature of the plaintiff's claim requires that both these counts should be retained. If the plaintiff relies on the special count alone, he is liable to be defeated altogether if he fails to prove the contract as alleged. On the other hand, the common count alone is insufficient, because the two first instalments are payable at certain fixed periods which may happen before any of the work is commenced, therefore the implied *assumpsit* would only apply to the two last instalments. There is no implied contract to pay the two first instalments. He cited *Cahoon v. Burford*,<sup>a</sup> and *Gilbert v. Hales*.<sup>b</sup>

Lord Denman, C. J. I think the plaintiff is entitled to retain both these counts in the declaration.

Mr. Justice Patteson. I am of the same opinion. This case appears to me most like the instance given in the new rules, that a count for freight upon a charter party, and for freight *pro rata itineris* upon a contract implied by law, may be allowed.

Mr. Justice Coleridge. I think there might be some difficulty in recovering the two first instalments under the last count, unless all the work was completed.

Mr. Justice Wightman concurred.

Rule absolute.

#### Common Pleas.

*Newton and wife v. Boodle and others.* Hilary Term, 1847.

TERM'S NOTICE.—BILL OF EXCEPTIONS.—DEATH OF JUDGE.—MOTION FOR NEW TRIAL.

*The rule requiring a term's notice after the lapse of a year without any proceedings having been taken, has no reference to steps taken after verdict.*

*Where a bill of exceptions remained in the possession of the judge for his signature for some time, and he died without signing*

*it, the court entertained an application for a new trial on the ground of misdirection, after the lapse of several terms.*

TRESPASS for false imprisonment. The defendants pleaded first, not guilty, and secondly, a justification under a *ca. sa.*; and at the trial before Tindal, C. J., at the London sittings after Hilary Term, 1845, a verdict was found, under his lordship's direction, for all the defendants upon the second plea, and against them, with the exception of one, on the first plea. A bill of exceptions was tendered on behalf of the plaintiff, and was sent to the Chief Justice to be signed, but in consequence of the note of the exceptions taken at the trial by the Chief Justice having been mislaid, which his lordship desired to see, the bill remained in his possession unsigned at the time of his death, in July, 1846. In the following November the defendants signed judgment, to set aside which on the ground of irregularity, and for a new trial on the ground of misdirection, a rule *nisi* had been obtained during last term.

Talfourd, Sergeant, (Channell, Sergeant, and Cowling with him,) now showed cause. It is said that a term's notice ought to have been given before the signing of judgment by the defendants. But it is submitted that the rule requiring such notice relates only to proceedings before verdict; 2 Tidd's Pr. 903. As to the bill of exceptions, the proper course was to have argued all the facts before a judge at chambers on summons, but that course was not taken, and judgment therefore was signed. *Hinton v. Acraman*, 16 Law J., N. S., C. P. 3; *May v. Wooding*, 3 M. & S. 500; *Lord v. Wardle*, 15 Law J., N. S., C. P., 259. They were stopped by the court on the point of misdirection.

Newton in person contra. The delay in the bill of exceptions was merely such, and not a refusal. *Cottam v. Partridge*, 3 Scott, N. S. 174. There has been no proceeding here for a year, and therefore a term's notice was clearly necessary. The mere leaving the bill of exceptions with the Chief Justice could not be considered any proceeding in the cause in the proper sense of a proceeding.

Wilde, C. J. The parties who tendered the bill of exceptions should have used more diligence in prosecuting it. It was tendered in 1845, and the Chief Justice was living in 1846. The court is unable to reinstate the parties in the same position as if the bill of exceptions had been duly sealed, and in order to remedy as far as possible the inconvenient consequences of the want of the bill of exceptions, the court has treated the motion as one for a new trial. On, however, examining carefully the learned Chief Justice's notes of the evidence, we think his direction to the jury was right, and therefore that there is no ground for a new trial. The other point seems to be decided by the case of *May v. Wooding*, cited in the argument.

The rest of the court concurred.

Rule discharged with costs.

<sup>a</sup> 13 Mee. & Wels. 136. <sup>b</sup> 2 D. & L. 227.

**Court of Review.**

*Ex parte Cocks, re Barwise.* Monday, Feb. 22, 1847.

**PRACTICE.—PROOF FOR COSTS.**

*A judgment creditor has a right to prove for the costs of an action in which he obtained judgment before the bankruptcy, where the debt itself has been paid after the bankruptcy by another party liable to it.*

An action of assumpsit had been brought against the bankrupt as the drawer of a bill of exchange, and judgment on a *nil dicit*, and the ordinary rule to compute had been obtained therein before the bankruptcy occurred. After the bankruptcy final judgment was obtained, and the acceptor paid the amount of the bill. The petitioner claimed to prove against the bankrupt's estate for 10*l.*, the amount of costs in the action, but Mr. *Fune*, the commissioner, rejected the proof.

*Amphlett*, for the petitioner, contended, that independently of the stat. 6 Geo. 4, c. 16, the debt was proveable, and cited *Ex parte Poucher*, 1 Glyn. & Jam. 385; *Ex parte Halm*, Mont. & M'A., 70; and *Scott v. Ambrose*, 3 M. & Sel. 326.

*Swanston*, for the assignees, opposed the application on the ground that the petition was an attempt to prove for costs independently of the debt, and said that the determination come to by the commissioner was quite right.

The *Chief Judge*. This case appears to me to be governed by *Ex parte Poucher*, except that the defendant having been paid from another quarter, there has been no proof under the bankruptcy. I am of opinion that makes no substantial difference. This decision, it must be borne in mind, proceeds on materials not before Mr. *Fune*, whose attention was drawn to the statute only, on which ground I should have agreed with him.

**NISI PRIUS CAUSE LISTS.****Queen's Bench.***London.*

D. Richardson Capes and S.	Mackay (Inj.) Blackmore (Inj.)	Brooke Burton and others, execu- tors, &c.	Tres. Baxendale and Co. Dt. Alban and B. Dt. Smith
Keene Vincent and S.	Dean (stayed) S. J. Franklin & another (stay- ed) S. J.	Grace Davis and others	Covt. Wm. Bevan Dt. Wilde and Co. Prom. Few and Co. Van Sandau & Co. Covt. Norris and Son Covt. Gilbert, Hook, & Co.
Lewis and S. W. H. Green Phillips Pearce and Co. C. B. Wilson Leigh	Brand (stayed) Bond (Inj.) S. J. Hartley & another (stayed) Robertson (stayed) S. J. Gibbs (stayed) Edwards and another, as- signees S. J.	Harper Stanley Manton Dargan Aberdeen The East India Company Glyn, Bart., and others Clarkson Curling The Corporation of the Royal Exchange Assu- rance Company	Dt. Lawfords Pro. E. and J. Lawford Indt. Savage Prom. Same. Covt. T. C. & H. Freshfield Pro. Dean and Co. Prom. E. White Pro. Chester and Co. Pro. Condell Proms. Dean and Co. Proms. Tatham and Son. Prom. Same Proms. Same Proms. Soles and T. Proms. I. Abbott
Oliverson Lavie and Co. Wight Lacy and B. Hughes K. and M.	Soares The Queen Bailey and another Fisher (stayed) S. J.	S. J. Clarkson S. J. Curling S. J. The Corporation of the Royal Exchange Assu- rance Company Straker and others Barron Suffield Harrison and others De Vear, sued, &c.	Pro. E. and J. Lawford Indt. Savage Prom. Same. Covt. T. C. & H. Freshfield Pro. Dean and Co. Prom. E. White Pro. Chester and Co. Pro. Condell Proms. Dean and Co. Proms. Tatham and Son. Prom. Same Proms. Same Proms. Soles and T. Proms. I. Abbott
Amory and Co, W. H. Green Jordeson Hughes K. and M. Cox and S. George Bower Same Same C. Young Same Sole and T.	Travers and another Bond (Inj.) S. J. Cundell (stayed) Berkley Tebbutt and another S. J. Archibald and others S. J. Same S. J. Same S. J. Newton and another S. J. Same S. J. Belcher and others, assign- ees, &c. S. J.	S. J. Straker S. J. Tatham S. J. Boddington S. J. Tatham S. J. Hyde, jun. S. J. Liddiard S. J. Renshaw S. J. Curling S. J. and S. J. Macgregor S. J. Hagger S. J. Critchley S. J. Sharp S. J. Castelli (stayed) Shaw S. J. Hales Smith Marks S. J. Forbes and others S. J. Brighton, Lewes, & Hast- ings Railway Company	Dt. Tilleard and Co. Pro. In person Prom. Fearon and C. Dt. Pontifex and M. Proms. Milne and Co. Proms. Same Pro. Oliverson, Lavie, & Co. Eject. Wm. Smith Trov. Wright and K. Dt. J. W. Brooks Proms. H. Crocker Proms. Tatham and Co. Sutton and Co.
James Coppock Hook Chubb Lacy and B. Same Rhodes and L. C. and H. Hyde William Batt N. Bennett W. W. Oldershaw A. Digby Stevens and Co.	Collett Conyngham, Esq., others Bevan Bailey and another Same Boutcher and others Doe dem Shaw English Russell Wright Cole Borror	S. J. Curling S. J. and S. J. Macgregor S. J. Hagger S. J. Critchley S. J. Sharp S. J. Castelli (stayed) Shaw S. J. Hales Smith Marks S. J. Forbes and others S. J. Brighton, Lewes, & Hast- ings Railway Company	Pro. In person Prom. Fearon and C. Dt. Pontifex and M. Proms. Milne and Co. Proms. Same Pro. Oliverson, Lavie, & Co. Eject. Wm. Smith Trov. Wright and K. Dt. J. W. Brooks Proms. H. Crocker Proms. Tatham and Co. Sutton and Co.

Walcot and C. R. Hodgson Sparham T. Taylor S. T. Cookney	Herapath Crampton Foggo Newcombe Doe dem. Cornthwaite and others	Bonstead Green Clarkson Allen	Proma. Meggison and Co. Proms. Wm. Savage Sadgrove Morris and Co.
F. S. Manning Lawford	Cumming The Queen	Smith and another S. J. Cox S. J. Charretie and another, in- dicted with others	Tres. and Ejt. E. Lewis. Fladgate and Co. Indt. Keddell and Co. for Charretie, Fry & Co. for Young, Bart.
Blower and Co. Wyche Jones, Blaxland, & Co. W. T. Whyte Bassett Sandys and P. Mawe S. Heath, jun. Lawford	Powell and others Lowe Capper and another Faulconer Coulson Grove Gibbs Field The Queen	S. J. Allen S. J. Penn Phillips Cole Lewis Rule S. J. Wildman Sharpe, sued, &c. S. J. Charretie and another, in- dicted with others	Proms. Cotterill Ca. Cattarns and F. Proms. Bankart Asst. Goddard and E. Dt. Adams Proms. Bush and M. Proms. Charles Parker Ca. S. J. Sydney. Indt. Fry and Co. for Char- retie, Kendell and Co. for deft., Sir W. Young
Amory and Co. Same Same W. O. Holcombe Amory and Co. H. T. Archer C. Hodgson Sutcliffe Robert Still Mawe William Black W. W. Oldershaw Cox and S.	Waley Lake Shewell and another Garrod, extrix. Taylor, P. O. Millwood Baker Trimen Hooppell Dean King Bennett Alcock	S. J. Idle S. J. Bell S. J. Brown Garrod S. J. Black Lines Bessett S. J. De Burgh Slee and another Simms Hodge Thompson S. J. Corporation of the Royal Exchange Assurance	Pro. Richardson and Co. Pro. Abbot Pro. Venning and Co. Dt. Kirk Prom. Ashurst and Son F. and Issue, Pope Dt. Thomas Martin Pro. Brundrett and Co. Slee and R. Pro. Thompson Ca. Done Prom. Hook Dt. I. C. and H. Fresh- field
Foord W. Dimes Clapham Wallington Tate W. Smith Goodman and W. Beddome and W. Amory and Co. H. Chester and Son. W. Smith Campbell and W.	Garrard Dimes Payne Wallington Brown Day (by next friend) Parker Steele Taylor, P. O. Silly Harborne Doe dem. Hammond	Cottrell Schultes, extrix. Dillon Lambert, Bart., sued, &c. Morrison Edwards Hills Hoe Lowe Whichelo Ludlow Russell	Proms. Crafter Dt. S. Fisher Covt. Birch Dt. Nicholson Prom. Hindman and H. Ca. W. C. Humphries Proms. Reed Proms. I. Taylor Prom. Oldershaw Dt. King Ca. Bicknell and B. Ejt. S. Pile

## Common Pleas.

Lowless and Son Baxendale and Co. H. Ashley B. Field Lofty, Potter, and Son C. Pearson Same Oliverson, Lavie & Co. Finch C. Fiddy Finney T. Tyrrel Marten Minet and Smith Pontifex and M. Oliverson, Lavie & Co. Amory and Co. Same Reed and Langford A. Haynes J. Hodgson M. Lewis Lawrance and P. Kingdon and S. J. Hudson	Mantzgue Carne Hopwood Griffin Coxhead The May. of London Same Jerry and others Clarke Beard Brettell Young Lomer Mauger and another Gaskell Bayley Bone Young Block and another Mahony (otherwise Kelly) Stocker J. W. Cole Oxley James Powell	S. J. St. Katherine Dock Co. S. J. Bryant S. J. Thorn S. J. Black S. J. Cass S. J. Kenchen Gt. Western Railway Co. S. J. Hay and others S. J. Barker and others S. J. Egerton and others Wynne S. J. Gouge S. J. Kingsford, sen., and others S. J. Brightman and others S. J. Gambier S. J. Hill S. J. Morrison S. J. Same S. J. Robertson Justice S. J. Gull S. J. Weiss S. J. Hilder S. J. Clive S. J. Bradbury and another	Trov. Oliverson, Lavie & Ca. Ensor [Co. Ca. Thompson Prom. Oldershaw Ca. Ellis Trov. Newbon and E. Dt. Maples and Co. Prom. Lane and P. Prom. Stevens and Co. Ca. Smith and T. Prom. Gough Ca. Hindman and H. Trov. Wright and Co. Prom. Lane and P. [Co. Prom. Oliverson, Lavie & Prom. R. Ellis Prom. Bevan Prom. Same Venning and Co. Isa. Justice Dt. Marten and Co. Prom. Elmalie and Co. Prom. Dawes and Sons Prom. G. N. Giles Wright and Co.
--	---	---	--

J. J. Blake	Soady	S. J. Mangles	Prom. Young, V. and Co.
R. Forn	Stanway	S. J. Wells	Prom. In Person
J. H. Linklater	Smith and others assignees	Leach and others	Trov. Corner
G. Hensman	Douglas	Clifton	Dt. Nicholson and P.
Ferrell	Clark	S. J. Rastrick	Prom. Sutton and Co.
J. J. Blake	Stiles	Wylie	Prom. Roberts
Vallance and B.	Vallance and another	Duke of Brunswick	Dt. Warneford
O. Gray	Deacon	S. J. Hopkins	Dt. Van Sandau and Co.
Borradaile	Mortimer	S. J. Gell	In person
Hook	Tillam	Copp	Dt. Dyne and Co.
Townshend	Deprose	Cowell	Tres. Hill and Co.
J. Paterson	Thompson & another	S. J. Fisher	Gedye
Lawrance and P.	Backhouse	Woody	Prom. Coppock
Bigg and Co.	Collard and another, ex- ecutors	Croft	Prom. Richards
W. B. Jones	Veroy and another	Wright	In person
Same	Bentley and another	White	Wilkins and M.
Wire and Child	Tibaldi	S. J. Wanless	Ca. James Taylor
Bevan and G.	Backhouse and others	Maitland	Prom. Loaden
Hill and Matthews	Cowell	Diprose	Tres. Townshend
A. J. Lane	Robins	Berry	Dt. H. W. Cross
Townshend	Milos	Haywood	Cross
G. Annesley	Gannon	Mollady	Pettendreigh and Co.
Lofty, Potter, and Son	Smart	S. J. Allison	Prom. Tilson and Co.
Miller	Frances and others	S. J. Wright	Dt. Hall
Basnett	Aaron Smith	H. B. Roberts and others	{ H. B. Roberts { Solomons
C. Robson	Lawes	S. J. Webb	Prom. Hall
J. J. Spiller	Dickinson	Hodgson	Prom. Hensman
Richardson	Bushell	Weiss	Dt. Elmslie and Co.
Alexander	Nimes	Dunn	Prom. Hensman
Lofty, Potter, and Son	Bathany	Welfit	Ca. Coverdale and L.
Bush and Mullins	Cartwright	Littlejohns, sued, &c.	Lindsay and M.
J. T. and H. Baddeleys	Gobey	Curling	Dt. In person
S. Yates.	Cusel	Pym	Prom. Ellis
Wilde and Co.	Bell, P. O.	S. J. T. W. Marriott	Prom. Abrahams and M.
Surr and Gribble	Surr	Savery and another	Prom. W. Harris
Same	Same	Same	Prom. Same
Cattarns and F.	Brown	S. J. Chapman	Prom. W. W. & R. Wren
H. J. Barber	Flight	Powell	Ca. F. J. Manning
Thomas Clark	Buckland	Furber	Prom. C. V. Lewis
Reed and L.	Black and others, assignees	Blyth	Jay and Pilgrim
Empson	Upston	Balcombe	Prom. Goddard and E.
Vandercom and Co.	Cleave	O'Connor	Prom. Yates and Turner.
W. Smith	Relfh	S. J. Hamber	Tres. G. Rutherford
Hoppe and Boyle	Richards	Davies and another	Prom. C. A. Chaplin
W. H. Green	Potter	Norris	Prom. J. L. Beetholme
J. T. and H. Baddeley	Oliver	Renton	Prom. Whittaker
G. Bower	Grauger	Cooper	Prom. Van Sandau & Co.

**Crychquer.**

Rickards and W.	Elliott	S. J. Moore	Pro. Langley and G.
Dampier	Hughes	S. J. Ward, Esq.	Pro. Elmslie and P.
Baxendale and Co.	Dawson	S. J. Prichard	Pro. Ashurst
Oliverson, Lavie & Co.	Oliverson and another	S. J. Sunly	Pro. Walton
Desborough and Y.	Foakes	S. J. Pilkington	Pro. H. W. Bull
Fisher and De J.	McGregor	S. J. Knight	Tres. Kensit
Tilson and Co.	Burnside	Dayrell	Pro. H. Jackson
Maples and Co.	Bell	S. J. Jenkyns	Pro. Bartholomew
Crosby and Co.	Cohen	S. J. Williams, Bart.	Pro. N. Giles
C. F. Chubb	Bailey	S. J. Shuttleworth	Dt. Bell and Co.
Lawrance and P.	Wyld	S. J. Black	Pro. Hindman and N.
R. Ellis	Bailey and others	S. J. Mangles and others	Pro. Young and Co. [Co.
R. Hodgson	Benson and another	S. J. Anderson and others	Pro. Oliverson, Lavie and
Burgoyne and Co.	Collett	S. J. Richardson	Issue, Cotterill
Van Sandau and Co.	Brooke	Pidgeon	Sci. fa. Stone and T.
Maples and Co.	Dickson and others	S. J. Mangles and others	Pro. Young, V. and Co.
Tatham and Co.	Muter	Murray	Pro. Thomas
Walker	Clements	S. J. Flight	Dt. & Dtaue. Cox & Co.
Rowland and Co.	Chilton, jun.	London and Croydon Rail- way Co. and another	Tres. Burchett and Co.
In person	Gresham	Polhill and others	Dt. Hodgson and Bishop in person

Gadsden and F.	Hampshire	S. J. The Eastern Counties Rail- way Company	Ca. Duncan
Brady and Son	Wilson	S. J. Randich	Dt. L. Breton
Walton	Fraser	Lamont	Pro. Venning and N.
Lindo	Gillan	Murray	Pro. Woodruff
Wansey	Holmes	Carden	Pro. Clarke and Co.
Tatham and Co.	Fenn	S. J. Gould and another	Pro. Bischoff and C.
Wilkinson and R.	Scott	Hart	Pro. Gulsworthy and Co.
Crowder and M.	Gibb	S. J. Marshall	Pro. Wilde and Co.
Devonshire and W.	Whitehead, jun.	S. J. Stephenson	Pro. Parkes
Milne and Co.	Nix	Roche	Pro. Lyle
F. J. Hand	Benson	Fawdett	Dt. Rivolta
Beever and B.	Raby and another	S. J. Allan	Pro. Cotterill
Gedye	Pain	Benns	Dt. Buchanan
E. Moss	Coleman	Green	Dt. Innes
Wilkinson and R.	Cooper (P. O.)	Wicks	Pro. Morris and Co.
Bloxham and E.	Williams	Gadber	Pro. Chester and Co.
Same	Falk and another	Same	Dt. Same
Tilson and Co.	Allison	S. J. Berkbeck and another	Pro. Meggison and Co.
Coe	Broom	Skaif	Pro. Crossfield
W. Myatt	Percy	Hopkins	Pro. Van Sandau and Co.
Finch and Co.	Brighton	Moore and another	Dt. Hughes
Chisholme	Ruddock	Inglis	Dt. Willoughby and J.
Goddard and E.	McKenzie	Griffiths	Pro. Wood
Bridger and B.	Moakes	Fox and others	Pro. Murray
E. A. Chaplin	Smith	Oakley	Dt. Gregory and Co.
J. G. Fisher	Neate	Procter	Pro. T. D. Taylor
H. Lloyd	Laws & another, assignees	Bott	Pro. Tripp
Walton	Fraser	Rochner	Pro. Venning and N.
Burnell	Tilly	Bliss	Dt. W. H. Turner
J. B. Wathen	Brook	Amis	Ca. Patten
A. Beckett and Co.	Alsager and others	Harrison	Dt. Austen and H.
Horn	Miller	Elcock	Dt. Capes and S.
Chilton and Co.	Norris	Anderson	Dt. Webb and Co.
Same	Pike	Greaves	Dt. Chester and Co.
Same	Huggins	Critchlow	Dt. Same
Jones and Co.	Brown and others	Holmes	Dt. H. R. Hill [Co.
J. Bell	Anton	S. J. Geralopulo	Pro. Oliverson, Lavie and
C. Parsons	Black	Baxendale and others	Ca. Tatham and Co.
Gedye	Lott	Elgie	Ca. Thomas and Son
H. J. Turner	Warren	Legrew	Pro. Dyne and Son
Kennedy	Abbey	Cobbold	Dt. Wilkinson and C.
Cook and S.	Billes	Beetham	Dt. Beetham and F.

## COMMON LAW SITTINGS.

## Exchequer of Pleas.

After Easter Term, 1847.

## IN MIDDLESEX.

Monday	May 10	Common Juries.
Tuesday	11	Customs & Com. Juries.
Wednesday	12	
Thursday	13	
Friday	14	Excise & Com. Juries.

## IN LONDON.

Tuesday	May 11	To Adjourn only.
Wednesday	15	Adj. Day, Com. Juries.

The Court will Sit at 10 o'clock.

## PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

## House of Lords.

## NEW BILLS IN PROGRESS.

Consolidation and Amendment of the Law of Bankruptcy. For 2nd reading. The Lord Chancellor.

Repeal of Insolvency Jurisdiction of Courts of Bankruptcy, Abolishing Court of Review, and Reducing Number of Commissioners. (No. 2.) In Select Committee. Lord Brougham.

Threatening Letters. For 2nd reading. Lord Denman.

## House of Commons.

## NEW BILLS IN PROGRESS.

City Small Debts Court. In Committee. Mr. Masterman.

Law of Railways. For 2nd reading. Mr. Strutt.

Agricultural Tenant-right. In Committee. Mr. Strutt.

Pious and Charitable Property. For 2nd reading. Lord J. Manners.

For the Speedy Trial and Punishment of Juvenile Offenders. In Committee. Sir John Pakington.

Lunatic Asylums Regulation. Att.-General.

Inclosure Act Amendment. Sir F. Thesiger.

Health of Towns. For 2nd reading. Lord Morpeth.

Towns Improvement Clauses. For 2nd reading.

Taxation of Costs on Private Bills. For 2nd reading. Mr. Hume.

Registration of Voters. For 2nd reading. Mr. Walpole.

Highways. In Select Com. Sir Geo. Grey.

Administration of the Poor Laws. For 2nd reading. Sir Geo. Grey.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, MAY 15, 1847.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

### THE METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

#### ADDRESS TO THE PROFESSION.

WE announced the formation of this new society a few weeks ago,\* and are now enabled to submit to our readers the Address of the Committee of Management to the Attorneys and Solicitors of England and Wales. It was erroneously supposed that the metropolitan solicitors, in their exertions for the improvement of the profession, looked only to themselves, and disregarded their provincial brethren. It was imagined that not only was there an actual estrangement of professional feeling, between the town and country practitioners, but that any approach to united exertions for the common good, was wholly incompatible with the nature of their respective positions and interests.

True indeed, it is, that occasional differences of opinion on the wide range of professional measures will arise out of the different views taken by some, at least, of the respective classes of practitioners; but we doubt not they are fully convinced that, unless they act cordially together, the objects of the association cannot be completely effected. The great test on all differences will be the *public good*, not temporary nor partial, but *permanent* and *general*. This end and aim must comprehend a due regard to the station, character, and interests of attorneys and solicitors, without whom, we verily believe, the affairs of the community cannot be prosperously conducted. Their practical experience,

habits of business, legal knowledge, discretion, activity, intelligence, and integrity are indispensable in transacting the concerns of our vast and complicated system.

The address, in its opening, candidly admits the usefulness of some of the modern changes in the law, but animadverts on the mischievousness of most of the practical alterations which have taken place. It remonstrates against rejecting the aid, which might have been derived from the experience of attorneys and solicitors, in considering the proposed changes, and calls for due attention to the just interests of professional men, and the improvement of their position in the scale of society.

It adverts briefly to the history of attorneys, and sets forth concisely the nature of their office and duties;—the reasons which have induced the establishment of the association;—the causes that embarrass the administration of justice;—and the measures proposed for remedying the existing evils. Many of those evils are familiarly known to our readers, though they require to be again set forth, in order to remind or inform the profession which in general, is too apt, in the discharge of professional duty, to neglect personal interests.

Amongst other topics, are noticed the taxes on administering justice;—ill-digested and ill-constructed statutes;—the unjust and unequal imposts on the attorneys;—the deficient construction and inconvenient situation of the courts at Westminster, and the want of accommodation both there and in the Courts at *Nisi Prius*, and the sessions and assizes;—the exclusion of attorneys from offices of honourable distinction, and the encroachment on their ancient rights and privileges;—the improvements in legal

\* See 33 L. O. 508.



education;—the promotion of fair and honourable practice; &c.

These, and other topics have been again and again discussed in these pages. Here, however, they can only be pointed out, and held up to notice. It belongs to the members of the profession to take effective steps for redressing their wrongs, and therefore we rejoice that a large and effective body has been formed to whom the matter may be safely confided. But let it be recollected that success can only be secured by the support of the general body. However intelligent and however active may be the committee, unless they are supported by their brethren at large, they cannot fully achieve their objects.

We would therefore follow up the recommendations of this address by urging every attorney and solicitor to enrol himself in the association without delay, and to promote the formation of local societies in all the large districts in which none at present exist.

It is intended, it appears, to prepare the way for submitting the state of the profession to parliament, and in the mean time to circulate information on the extent to which the public interest is affected by the grievances complained of. Our pages will furnish a faithful record of those grievances during the last sixteen years, and we shall take an early opportunity of arranging under appropriate heads the large mass of information which it has been our duty from year to year to collect. In this respect we have advantages in aid of the objects of the association which are singularly fortunate, for this work was established precisely at the time when the wild and reckless, the crude and ill-considered, projects of law reform took their rise. Step by step we combated them, sometimes checking or turning their course, introducing palliatives to the coming evils, retarding their progress, and sometimes defeating them.

We are glad to observe that the committee of the new association have had interviews with the council of the Incorporated Law Society, and with the Committees of many Provincial law societies. The objects to be attained being just in themselves, tending to the public good in the due administration of justice, and calculated to promote the usefulness and respectability of the profession, the New Society will have the cordial co-operation of all the existing societies. We observe that throughout the address there prevails a

just consideration of the interests of suitors and the community in general. It is manifest, indeed, that the true and enduring advantage of the profession is identical with that of the public.

During the short time which has been occupied in constituting the society we think the committee of management, or governing body, has been well chosen. At present it consists of 24 town and 26 country solicitors. The *London* members are as follow :—

Richard Baynes Armstrong; Edward S. Bailey (of the firm of Bailey, Shaw, Smith and Bailey); Keith Barnes (of the firm of Lyon, Barnes and Ellis); James Beaumont (of the firm of Beaumont and Thompson); George Bower; Edward Chester (of the firm of Chester, Toulmin and Chester); Henry C. Chilton (of the firm of Chilton, Burton and Johnson); Henry M. Clark (of the firm of Clark and Davidson); John Coverdale (of the firm of Coverdale, Lee and Purvis); Charles Druce (of the firm of Charles, John and Claridge Druce); George Faulkner (of the firm of Gregory, Faulkner, Gregory and Skirrow); Edwin W. Field (of the firm of Sharpe, Field and Jackson); Harvey Gem (of the firm of Gem, Pooley and Beisley); Alexander W. Grant (of the firm of Walker, Grant and Walker); John S. Gregory (of the firm of Gregory, Faulkner, Gregory and Skirrow); Campbell W. Hobson (of the firm of Austen and Hobson); Charles Jennings (of the firm of Charles and Edmund J. Jennings); Henry Karslake (of the firm of Karslake, Crelock and Karslake); Thomas Loftus (of the firm of Holme, Loftus and Young); Thomas F. Maples (of the firm of Maples, Pearse, Stevens and Maples); William H. Palmer (of the firm of Palmer, France and Palmer); Barry P. Squance (of the firm of Tilson, Squance, Clarke and Morrice); John J. J. Sudlow (of the firm of Sudlow, Sons and Torr); John Young (of the firm of Desborough and Young).

The *Provincial* members of the committee are,—

At *Leeds*: John Hope Shaw; and Robert Barr (of the firm of Barr, Lofthouse and Nelson). At *Liverpool*: M. D. Lowndes (of the firm of Lowndes, Robinson and Bateson); Peter Wright; James O. Watson (of the firm of Watson and Webster); H. H. Statham (of the firm of Curry and Statham); and J. B. Lloyd (of the firm of Lloyd and Wain). At *Birmingham*: T. Eyre Lee (of the firm of Lee, Pinson and Best); and R. W. Gem. At *Folkstone*: R. T. Brockman (of the firm of Brockman and Watts). At *Gloucester*: John Burrup. At *Lancaster*: John Sharp. At *Hull*: Thomas Thompson (of the firm of Thompson and Marshall). At *York*: Thomas Hodgson; and G. H. Seymour. At *Lincoln*: E. A. Bromehead. At *Oxford*: J. M. Davenport. At *Beverley*: T. F. Champney (of the firm of Bainton and Champney). At *Manchester*: James Crossley

(of the firm of Crossley and Sudlow); R. W. Whitlow (of the firm of Whitlow and Radford); James Street; and Thomas Taylor (of the firm of Rowley and Taylor). At Wrexham: John Lewis. At Ruthin: Joseph Peers. At Denbigh: Thomas Evans. At Newcastle-upon-Tyne: William Crighton (of the firm of Griffith and Crighton).

The Committee, thus constituted, has just issued an address, from which the following is extracted:—

"The attention of the public and of the legal profession has been of late years powerfully attracted to the state of the law and its administration, and many important changes have been made in both. Of the alterations in the law itself, some are highly beneficial, others of questionable merit; but the changes which have been introduced into the administration of it, have too often been hazarded, without sufficient inquiry into the causes which may have led to inconvenience or injustice, and without adequately weighing the effect of the proposed remedy.

"A course of crude and experimental legislation, which unsettles the administration of the law, without improving it, is injurious to the interests of all classes of society, and is peculiarly embarrassing to attorneys and solicitors, who have to contend with the difficulties of a fluctuating and defective practice. In common, therefore, with the rest of the community, and indeed in a much higher degree, they are interested in promoting sound and well-digested reforms; and, as the sole representatives appointed by the suitors,—charged with the protection of their interests,—and essential agents in carrying out whatever in those reforms, or in the general administration of the law, is of public utility,—they might fairly expect that their experience should be consulted, that their own position should be maintained and improved, and their rights as a profession, protected.

"The conviction that their just claims, as such agents, have been neglected, or rather improperly sacrificed, and that vigilance and united exertion are necessary for their defence, has long prevailed throughout their branch of the profession.

"To this conviction, the Metropolitan and Provincial Law Association owes its origin."

The Address then states the course pursued in establishing the Association.

"On the 11th of February last, a meeting was held in London to take this subject into consideration. It was composed of a numerous deputation from various provincial Law Societies, and a considerable number of solicitors resident in the metropolis; and they came to a resolution, 'That, in the present state of the legal profession, measures should be adopted for raising the character and position, and for promoting and supporting the interests of solicitors.'

"To deliberate upon these measures, and re-

port the result to a future meeting, a committee was appointed, who having, in the discharge of their duty, instituted various inquiries, and collected a large mass of information, on the past and present state of the profession, and the encroachments which have been made, especially in modern times, upon its rights and interests, and ultimately upon the rights and interests of their clients, made their report to a general meeting, which had been previously appointed to be held on the 25th March.

"After a full consideration of the report, it was resolved—*That an Association be formed for the purpose of promoting the Interests of Suitors, and the better and more economical administration of the Law; of obtaining the removal of the many and serious grievances to Solicitors and, through them, to the Suitors, and of maintaining the rights and increasing the usefulness of the Profession.*' That this Association be called 'THE METROPOLITAN AND PROVINCIAL LAW ASSOCIATION,' and consist of all members of the profession who contribute to its funds a donation of not less than 5*l.*, or an annual subscription of not less than 1*l.* That the business of the association be conducted until the first Wednesday in Easter Term, 1848, by the above-named committee, with power to add to their number, and to appoint local sub-committees, and that future committees of management be elected annually by the members, voting either in person or by proxy."

Such being the origin and constitution of the Society, the Committee of Management proceed to state, for the information of the profession,—

1st. Some of the reasons which have induced the establishment of this Association, and of the objects which are sought to be attained.

"If the former state of the profession of attorney and solicitor, even within the memory of many living practitioners, be compared with its present condition and prospects, it will be found that changes have been made, by various legislative and other measures, tending to lower that profession in public opinion, and degrade it from an intellectual to a mechanical employment. The solicitor has been excluded from many of the avenues to distinction which were formerly open to his industry and talents; and most of those official appointments which call for the exercise of the higher powers of the mind, have been transferred, and often to the younger, the inexperienced, and the least distinguished members of the bar. Thus, attorneys have been gradually shut out from commissionerships in bankruptcy and lunacy, from presiding in various local courts, and from advocating the rights of their clients before many tribunals in which they were formerly accustomed to practise; and these changes have been, it is to be feared, too frequently made to promote objects very foreign to legal qualifications and improvement."

<sup>b</sup> The present system of taxing costs is

"In the early periods of our civil history, the attorneys and solicitors were required, by several Rules of the Superior Courts, to become members of the Inns of Court or Chancery. The judges of those days considered them as no unfit associates, and thought they saw that the public advantage was connected with their elevation in the ranks of society. Has that policy been continued? On the contrary, the benchers, in recent times, have considered it expedient to exclude them. Upon what principle, unless that which prefers the aggrandisement of a particular body to the true interests of the public, it is difficult to conceive.

"A little reflection will prove, that the character of the profession is not a question which affects merely its members. There can be no doubt, indeed, that the duties performed by the attorney and solicitor are of indispensable utility to the public—to their convenience—to their necessities—to the wants and exigences of an extended commerce, and an advanced state of civilization. The vast and complicated affairs of the various classes of society, in a large and wealthy country governed by a multiplicity of laws, cannot be well understood, nor safely managed, without the constant aid of an intelligent body of men, well versed in the principles and practical application of those laws. Every new complication of social growth, every advancement of civilization, by the mere operation of the principle of the division of labour, makes such a body more needful. The attorney is called upon to advise as well on the expediency as on the right of commencing or defending actions; to consider both the legal principles involved in the case, and various technical matters in the outset and conduct of the proceedings, and to anticipate and weigh the evidence by which the client's rights must be finally supported. So, in the institution or defence of suits in equity, the solicitor must be familiarly acquainted, not only with the intricate machinery of practice, but with the nice and subtle principles which have regulated the decisions of courts of equitable jurisdiction. Again, his legal knowledge, experience, and judgment are required in framing complicated wills, conveyances, and marriage settlements, and in the investigation of the titles to landed estates, which often involve abstruse points, and property of great magnitude. The solicitor is not able, like the barrister, to limit his practice to a single department, whether of common law, conveyancing, or equity; he must possess a general, if not a profound, knowledge of every branch of our complicated and extensive system of jurisprudence.

"It is not generally considered, although the fact is unquestionable, that to the agency of solicitors is confided the administration of the

whole real and personal property of the United Kingdom. A large portion of it, which is administered by courts of equity and in bankruptcy, meets the view of the community, chiefly by means of the public journals; but the far greater residue is administered by solicitors, away from the eye of the public. Nor are his services confined merely to the pecuniary interests of the client. An attorney has often to exercise his skill and judgment to adjust disputes and to reconcile the differences that disturb the peace and peril the happiness of families, and to deal with questions that touch the character and reputation of a client, affect his personal liberty, and endanger, it may be, even life itself. In a word, the services they render are co-extensive with the transactions, the rights, the duties, and the wrongs, of all classes of civilized society; and even where the aid of counsel is called in, it is still to the solicitor, and to him only, that the client confides his interests.

"If this be a correct outline of the part which the solicitor is called upon to perform, are not the public, it may fairly be asked, deeply interested in the character and abilities of so important an agent—interested, therefore, that his just claims should be allowed, his rights maintained, and that the education and discipline which are to qualify him for the skilful and faithful discharge of his duties, should be promoted and improved? Nor are these subjects unworthy of the serious attention and protecting care of the legislature."

2nd, The committee then proceed to mention some of the evils which embarrass the administration of justice, and are alike injurious to the attorney and suitor.

1. *Taxes on justice in the shape of fees.*—These are paid at every stage of a cause, and fall in the first instance on the solicitor, but ultimately on the suitor. The officers of the court who receive these fees, are not responsible for the accuracy of the process which they stamp, or of the pleading which they enter. Their duty begins and ends in an operation purely mechanical. The suitor derives no benefit whatever from the payment, and they are to him a mere dry and useless tax. The impolicy of the *stamp duties* on law proceedings has been acknowledged, and they have been swept away; the impolicy of these taxes on justice is equally obvious. Why, therefore, should they be continued? In the administration of the criminal law, not only are the judges and officers paid from the public revenue, but often the costs also of the prosecutor, his witnesses, counsel, and attorney. In actions and suits respecting civil rights, to the occasional enforcement of which all property owes its value, it is surely enough that a party should be driven, in the establishment of his rights, to the necessity of a lawsuit, with its attendant expense of adducing proofs and employing attorney and counsel, without being compelled to contribute, in addition, to the general administration of justice.

equally injurious to the practitioners and the suitors; it gives no adequate remuneration to extraordinary skill or labour, and really offers an inducement to the needless employment of counsel, instead of encouraging the attorney to exercise his own talents and learning.

"2. *Crude legislation* has fastened upon our already overburdened legal code, many ill-digested and ill-constructed statutes, the fertile source of perplexity to judges and practitioners, and of litigation and expense to the suitor. We have seen a great deal of our ancient polity either altered or destroyed, and yet little substantial good effected, and all recourse to the court is nearly as expensive, dilatory, and oppressive as ever. Among other changes, for instance, the relations of debtor and creditor have been varied, and for this purpose new courts have been erected, additional judges appointed, and a novel practice established. The course of a few years has shown these alterations to be unnecessary or inconvenient. Then follow, in a regular train, the repeal of the law, the altered practice, the retiring pension, and compensation for offices abolished. Whether the mischief is to be traced to the incompetency of law-makers, or the overwhelming mass of business which falls upon both houses of parliament, and excludes too often the cautious deliberation that a change in the law, and especially in the powers and constitution of courts of justice, demands; or, whatever else may be the cause, it is surely time that some remedy for the evil were sought out and applied, and that acts of parliament which are to operate such important changes, were framed with care, foresight, and precision.

"3. *Exclusion of attorneys from offices of honourable distinction.*—By several modern legislative enactments, attorneys have been excluded from public offices which they formerly held. Among these may be particularly mentioned bankrupt commissionerships, lunacy commissionerships, and local judgeships. Again, by the Small Debts' Act (9th and 10th Vict. c. 95,) the judges are to be selected from a body whose only required qualification is, that they shall have been called to the bar seven years, such call involving no condition of previous legal examination or knowledge. By this means, contrary to the whole policy of modern legislation, the choice of judges is confined to one particular class, and the public is deprived of the services of other competent persons who have hitherto presided, and very ably and satisfactorily, over similar courts. To innovate upon the rights of the attorney and solicitor, and to degrade him from his former position, has not *always* been the prevailing policy. Many statutes may be found which acknowledge the eligibility of attorneys for those judicial situations. In particular, the 7 & 8 Vict. c. 96, and the 8 & 9 Vict. c. 127, authorized not only barristers but attorneys to act as judges in the execution of those statutes; and numerous bills have from time to time, from 1827 down to the last session, been brought into parliament by members of the government, wherein attorneys and solicitors were proposed as judges of the intended local courts. Until lately no objection was ever made to the fitness and capacity of that branch of the profession to discharge the duties of the office, and no charge whatever, either for want of character or ability,

has been established against the gentlemen who have held these appointments. Why they should have been placed under the ban of modern legislation, is a question more easy to ask than to answer.

"4. *Solicitorships to government boards.*—Amongst the offices which peculiarly belong to attorneys, and of which they have been wholly or partially deprived, may be mentioned solicitorships to government boards. These were formerly held by attorneys and solicitors, a usage which it required an act of parliament to alter (9th Geo. 4, c. 25); and it may be observed, that, whilst the statute affects to throw the office open, it has most commonly been filled by barristers—how unfitted for many of the duties thus thrown upon them, the records of public boards, if divulged, would proclaim. According to the ancient regulations of the Inns of Court, barristers, by undertaking such offices, would have been disbarred.

"5. *Exclusive Regulations of the Inns of Court.*—By the rules of the superior courts, attorneys and solicitors were formerly *required* to be members of one of the Inns of Court or Chancery. The benchers of modern times, however, have excluded attorneys and solicitors and their articulated clerks from admission into these societies. The reason for this prohibition seems nowhere satisfactorily stated. It surely cannot promote the public advantage, that attorneys should be debarred from advancement in their profession; for whatever raises them in the scale of intellect and honour, must, as already shown, contribute to the public good. Moreover, it is one of the first principles of a free state, that in whatever department of life a man may choose to exercise his talents, his course should be free and unobstructed. The question, how far any private irresponsible bodies should have the sole custody of the key to important branches of public occupation, must ere long have serious public consideration. No other occupation but the upper branch of the law is placed out of all legislative control.

"6. *The Right of attorneys to act as advocates*, though restricted much within its ancient limits, has, until recently, been recognised in several courts of quarter sessions, before bankruptcy commissioners, and in courts for the recovery of small debts. Owing to this privilege the suitor had the power of saving considerable expense; and the means of honourable distinction, conferred by intellectual and legal attainments, were placed within the reach of the attorney. This right has been gradually invaded and circumscribed within narrower limits,—a restriction which has already led to a great increase of tax upon suitors, and, if fully carried out, will lead to its entire extinction. In several courts of quarter sessions, where attorneys have till recently practised as advocates, they have been superseded by barristers; and the legislative security for the right of advocacy before commissioners of bankrupts, which is conferred on London solicitors by 1 & 2 W. 4, c. 56, s. 10, has been

withheld from solicitors in the country. To which may be added, that under the Small Debts Court Act, 9 & 10 Vict. c. 95, s. 91, advocacy is not a matter of right, but a privilege depending for its exercise upon the mere pleasure of the judge.

"7. *Certificated conveyancers.*—The Inns of court, according to long usage, have allowed their members to practise under the bar as certificated conveyancers; but such persons formerly confined their practice to the drawing of deeds and other instruments, and advising on questions of title. Of late years, however, a new class of practitioners has arisen, assuming not only the office of the barrister, in advising upon titles and settling drafts, but also claiming to transact business for clients and communicate with solicitors upon conveyancing matters, in the same way as solicitors. Now the legislature, for the protection of the public, having thought it necessary to require that no person should act as an attorney or solicitor without serving a clerkship of five years, and undergoing an examination, it is manifestly unjust to the profession and dangerous to the public, that persons not so qualified, and who have not given, and are not required to give, any evidence of their fitness or capacity, should be allowed to practise, and more especially in a branch of the law which requires the greatest skill and experience.

"8. *Parliamentary agents.*—The vast increase in the private business of the houses of parliament has brought forward a great number of persons acting as parliamentary agents. Formerly some of the clerks or officers of the two Houses, and but few solicitors, acted in that capacity. At present, however, not only solicitors, who from a knowledge of the rules of evidence, the laws of property, and the practice of parliament, may be fairly supposed qualified,—but persons who are qualified by merely signing their names in the private bill-office are allowed to act as parliamentary agents. This subject has attracted much notice, appears to be pregnant with public inconvenience, and should be brought before the houses of parliament with a view to some reform of the present practice.

"9. *Unjust and unequal taxation.*—The taxes, in the way of stamp duties, which are levied on attorneys and solicitors have long been a topic of just complaint. The stamps on the articles of clerkship and admission amount to 145*l.*, and the various fees for enrolment, examination, admission, and for commissions to swear affidavits and act as Masters Extraordinary in Chancery, extend the amount to 165*l.* Without entering into the justice or expediency of the stamp duties on articles of clerkship and admissions, the committee, for the present, advert only to the *annual tax* of 12*l.* on town, and 8*l.* on country solicitors, for the privilege of exercising their calling,—an imposition which has taken from them ever since the year 1785, when it was first levied, a large annual sum, now exceeding 90,000*l.* Its injustice and inequality are obvious. No tax of this kind is

levied upon the clerical or the medical profession in any of their several branches, nor upon the higher grade of the legal profession, nor is it proportioned to the extent of practice, and consequent profits, of the class on which it is exclusively imposed. It is a tax, in fact, that violates, not only the principle of equal justice, but the established rules of taxation. The profession is entitled to have this method of raising a revenue extended to every other branch of occupation, or to have it totally repealed.

"10. *Solicitors' fees and emoluments.*—Many attempts have been made within the last few years to abridge the length both of legal proceedings, of deeds, and other instruments. It is admitted, and indeed has been constantly put forward by the proposers of these alterations, that attorneys and solicitors were insufficiently remunerated, even while legal instruments remained unaltered. That their remuneration should depend upon the number of words contained in pleadings or conveyances very few would contend. The substitution of a charge duly proportioned to the labour and skill employed, and the responsibility incurred, would be a valuable boon to the public and acceptable to the profession.

"11. *The deficient construction and inconvenient situation of the courts at Westminster.*—These have been long complained of as of inconvenient structure and deficient in number and accommodation, not only for attorneys, but for jurors, parties, and witnesses. The distance, also, of the courts from the law offices and places of business, serves to retard the progress of legal proceedings, and interrupts the duties both of counsel and attorneys. If the courts of law and equity, the chambers of the judges, masters, registrars, and other officers were united under one roof, the change would abridge expense, prevent the waste of time, and essentially promote the efficient administration of justice. Besides these complaints regarding the courts at Westminster, there is a serious want of accommodation both for the public and the profession in the courts of *Nisi Prius* in London, and at the assizes and sessions in the country."

3rd. To these subjects and others which might be enumerated,—such as *compulsory references* at sittings and assizes,—the multiplicity and expense of *law reports*, &c.—the attention of every practitioner is earnestly invited; and the committee, lastly, state the *course of proceeding which, in the outset, they recommend to be adopted.*

"1. *Extension of law societies.*—They exhort every solicitor in the kingdom to become a member of one of the local law societies, now existing or hereafter to be established, in order that the whole profession may be comprehended in one general society. Many advantages will result from this. Union will be one, and not the least. It may appear to some to partake of paradox, but it is nevertheless true, that no class of the community has been so supine and

inactive in the assertion of their own rights, or permitted more passively aggression and encroachment. Scattered and divided, the profession has been weak; combined, their power will be, for the accomplishment of every reasonable object, amply sufficient. Another advantage that may be looked for is, the salutary control over all its members which may be attained by means of such an extended association: thus, disputes may be adjusted, rules of practice established, misfeazance prevented, and, what has hitherto been wanting, support and encouragement afforded to the attorney, under circumstances of trial and difficulty, which may sometimes meet him in the fair and honourable discharge of professional duty.

"The committee recommend, that in all those counties which do not yet possess those important advantages, law societies and law libraries, should, without delay, be founded; and such societies, when formed, should join either the present Provincial Law Societies' Association, or form a new association branch of the general body.

*Promotion of fair and honourable practice.*—This important measure, if carried out, will promote fair and honourable practice, an object equally beneficial to the public and to all branches of the profession. To these societies, or to the general association, appeals may be made on disputed points of professional usage; abuses may be examined and rectified, and applications to the superior courts, or to parliament, may be concerted.

"The committee have had interviews with the council of the Incorporated Law Society, and with the committees of many of the provincial law societies; and as the objects of the association are just in themselves, tend to the public good in the due administration of justice, and are, moreover, calculated to promote the usefulness and respectability of the profession, they have received assurances that the present Association will have the cordial co-operation of all the existing societies.

"2. *Improvement in legal education.*—As a means of raising the intellectual character of the profession, the committee recommend that a higher degree of classical literature, of science, and general knowledge, than is ordinarily possessed, should hereafter be required, before the clerk is allowed to be articulated. The examination also, as to the principles and practice of the law, should gradually be improved, become more extensive and stringent; and, with a view to excite emulation, a further examination might be instituted for the purpose of conferring some mark of honour on candidates who should distinguish themselves by a profound and accurate acquaintance with the various topics of general and legal knowledge. Such a measure would probably go far to secure the after success in life of those most likely to be an honour to the general body.

"3. *State of the profession to be submitted to parliament.*—To promote the redress of all, or at least some, of the public and professional grievances which have been touched upon, and

of others that may hereafter be brought to their notice, the committee propose, at as early a period as may be convenient, to bring the general state of the profession, or, if that be too large a matter, at least some particulars of it, under the consideration of parliament. In the mean time, they are taking means to collect the materials and evidence to be adduced; and they strongly urge upon every member of the profession, the necessity of contributing his aid, by expressing to the committee his sentiments on the various topics which have been noticed in this address, or suggesting others; adducing at the same time instances in support of his opinions. The committee fully expect from these aids, and from various sources of information opened to them, to be prepared with a great body of facts ready to be established before a parliamentary committee.

"4. *Information to be publicly circulated.*—The committee propose also from time to time to circulate information on the past and present state of the profession, and on the manner and extent in which the public interest is thereby affected. Such information the committee conceive to be necessary, not only for the public, which has at present a very superficial knowledge of these matters, but even for the profession itself, which, although the sense of injury is general amongst its members, has yet to form and mature its own opinion on many of the existing evils and their remedies.

"An investigation before parliament of the subjects referred to being an essential object of this association, it will be one of the duties of the committee to prepare the way for it, so far as circumstances will permit, by proper representations to members of the legislature, and by obtaining the assistance of some of those individuals who may be qualified to conduct the proposed parliamentary inquiry in a committee of the House of Commons.

"To further this object and to secure, in a future parliament, a candid hearing of their appeal, the approaching general election affords to every member of the profession an opportunity of contributing, by directing the attention of the candidates and representatives to the important subjects alluded to in this address.

"If all, or even the principal part, of these measures shall be adopted and followed out with vigour, tempered at the same time with the discretion which the subject so obviously requires, the committee entertain a confident hope, that the day will arrive, and is perhaps not far distant, when many of the hindrances to the attainment of justice shall be removed, when the tone of public feeling towards the profession will be changed, and the character and station of the solicitor placed upon that honourable eminence, to which, viewing the important and responsible nature of his duties, and the manner in which, for the most part, those duties have been performed, not only is he justly entitled, but the public interests imperatively require.

Every member of the profession is



earnestly requested to state his views on the several topics comprised in this address, and to signify, by the 1st of June, whether he is willing to join the association. Communications are to be addressed to any member of the COMMITTEE; or to Mr. MAUGHAM, the Honorary Secretary, Chancery Lane, London.

Whilst these measures are in progress for asserting the rights and advancing the interests of the profession, we are glad to learn that another plan, to which we have occasionally adverted, has not been lost sight of,—the establishment of an *Attorneys' College* for aged, infirm, and indigent members. The prospectus is now under consideration, and we have reason to believe will soon be issued.

## CONSTRUCTION OF THE STAMP ACT.

### SEPARATE AGREEMENTS ON THE SAME PAPER.

THE number of the Queen's Bench reports published during the last week,<sup>c</sup> contains two cases which bear directly upon the question, when an instrument containing various stipulations requires to be stamped, or if stamped with one denomination of stamp, when a different stamp is required? In one of the cases alluded to, the court held that the instrument, which was the subject-matter of discussion, required no stamp;<sup>d</sup> whilst in the second case it was held, that an instrument stamped with a 30s. stamp as a lease, also required an agreement stamp to render it admissible in evidence.<sup>e</sup>

In the case last referred to, articles of agreement were produced, by which one James Walton agreed to take a public house of Samuel Wharton, at a certain rent, to buy of Samuel Wharton all the beer which should be sold and consumed on the premises, under a penalty of 30l. each barrel, and to quit upon six months' notice, under a penalty of 30l. per month for holding over. By the same instrument it was further agreed, by John Walton, (the brother of the said James,) that he should hold himself responsible for any amount of money which may become due from James Walton to Samuel Wharton, to the amount

of 36l. This instrument was executed by the three parties named in it, James Walton, Samuel Wharton, and John Walton. This document was stamped as a lease. It was objected, that it also required an agreement stamp, containing, as it was argued, two distinct agreements,—one from James Walton to take his beer from Samuel Wharton, and an agreement of guarantee by John Walton. It was contended on the other side, that the agreement by James Walton to take beer was incident to the lease of a public house, like a covenant to build or insure in an ordinary lease; and as to the guarantee, it was said to be connected with the agreements of the lessee, and to have formed, in fact, part of the consideration for granting the lease.

The court thought, this was not a case of two parties joining in the principal covenant, as in *Price v. Thomas*,<sup>f</sup> it was a distinct agreement by one party to guarantee the payment of money by another, and therefore required an agreement stamp.

The facts in the case of *Mayfield v. Robinson* were more simple. By articles of agreement, not under seal, one T. North agreed to rent of George Mayfield a ferry called Dogdyke Ferry, for the sum of 6l. 6s. per annum, to be paid half-yearly, and the same instrument recited, that North at the same time bought of Mayfield "the great ferry boat" for 20l., of which 5l. was to be paid on the 6th April next, and instalments of 5l. at intervals of one year, until the whole sum of 20l. was paid. The agreement was unstamped, and it was objected, that it ought to be stamped, either as a lease at a rent of more than 5l., or as an agreement the matter of which was above the value of 20l. To this it was answered, that the instrument was not a lease, because it professed to pass an incorporeal hereditament, which could only be done by deed. As an agreement it was not subject to stamp duty, because the matter was not necessarily worth 20l., being only a yearly tenancy at six guineas a year. Then, as to the memorandum relating to the boat, it constituted a distinct agreement, exempt from stamp duty, as a memorandum or agreement "for or relating to the sale of goods."

The Court was clearly of opinion, that the instrument was not a lease, inasmuch as it purported to be a grant of an incorporeal hereditament without seal;<sup>g</sup> and if

<sup>c</sup> 7 Queen's Bench R. part 2.

<sup>d</sup> *Mayfield v. Robinson*, 7 Q. B. 486.  
<sup>e</sup> *Wharton v. Walton*, 7 Q. B. 474.

<sup>f</sup> 2 Barn. & Ad. 218.

<sup>g</sup> *Bird v. Higginson*, 6 Ad. & El. 824; *Wood v. Leadbitter*, 13 Mees. & W. 838.

it operated as an agreement for a lease, it required no stamp, because the value of the subject-matter did not bring it within the charging part of the act. The value of the boat could not be added to raise the amount above 20*l.*, inasmuch as that was a distinct and separate memorandum of a bygone purchase of goods, and in itself subject to no stamp whatever. Upon these considerations, the court held, that the instrument was properly received in evidence without a stamp.

The two cases suggest, that the construction the courts put upon the stamp act is so intimately connected with the nature and legal effect of the instrument tendered in evidence, that the document requires to be carefully weighed and examined before the application of the statute can be determined upon.

### STAMP ON FURTHER MORTGAGE SECURITY.

MUCH attention has been excited by the decision of the Court of Exchequer in the case of *Humberston v. Jones*, in which Mr. Baron Parke, in delivering the judgment of the court, said, that where, besides the transfer of a former mortgage, a fresh security was added for the sum originally lent, as in the case of *Brown v. Pegg*, 6 Q. B. 1, in which the first mortgage was of a term, and the second conveyed the fee to secure the old and new advances on one aggregate sum, a further stamp was necessary. In the present case there was not a transfer from the first mortgagee to the plaintiff, giving him only the same security which he had, and the same right to the land conveyed, but there was a fresh covenant from the defendant to the plaintiff to pay at different times, as well the original demand as the subsequent advance, and there was a power to raise the former as well as the latter sum by sale of the estate. The deed therefore contained more than a transfer of the old mortgage and the advance of a further sum, and consequently required a further stamp than the *ad valorem* on the new advance.\*

There is reason to apprehend that the form of transfer of mortgage adopted in this case has been generally, if not universally, used with stamps of the same denomination; and it may be well to consider whether the ambiguity in the Stamp Act should not be removed by a declaratory act. It appears that the construction to which the court has come is not in accordance with the opinions of the stamp office, where usually the strictest interpretation in favour of the revenue naturally prevails.

### COSTS IN THE NEW COUNTY COURTS.

To the Editor of the Legal Observer.

SIR,—This act is entitled "*An Act for the more easy recovery of Small Debts and Demands in England and Wales.*" I purpose in a few words to illustrate how far it deserves its title. This, I think, will appear by reference to the first case in which I have been personally engaged in the court:—A long pending dispute on the balance of an account arising out of the Reading and Caversham Regatta, existed and was pending in a local court of record in this borough, at the time the act came into operation, and willing to exemplify the value of its provisions for securing inexpensive justice, my client (the plaintiff) abandoned the proceedings instituted and entered a plaint in the new court for recovery of 4*l.*, being the balance claimed from the defendant. Much hostility of feeling had existed as to the claim, which was regarded in the town and by the parties rather as a trial of the personal character of a respectable tradesman than a dispute commensurate in importance with the amount sought to be recovered; and when the trial came off, it was apparent that nothing less than *personal integrity* was the question in issue. The defendant was represented by one of the ablest and oldest practitioners in Reading, who stated that he had as many as half-a-dozen witnesses to examine, some of whom came from a considerable distance in rebuttal of the plaintiff's statement and show that he had totally misrepresented the transaction. It is needless to go into the merits of the case, which, after occupying the greater part of the morning, terminated in the plaintiff's favour, the judge having first expressed a strong opinion as to the defence which had entirely failed, and the plaintiff left the court without any imputation upon his character, entitled by the express direction of the judge to the costs of the cause. Now, sir, comes the utility of the act. The costs were taxed by the officer of the court *without any notice of taxation having been given to either party to attend*, and consequently without any opportunity having been afforded for discussing either principal or practice. I subjoin the particulars of the costs allowed.

Claim . . .	£4	0	0
Adjudged . .	4	0	0

Plaintiff,

1847,				£	s.	d.
Mar. 31. Summons :	judge 1 <i>s.</i> , clerk					
	1 <i>s.</i> , bailiff 6 <i>d.</i>			0	2	6
Apr. 15. General fund :	(5 per cent.					
	on amount recovered)			0	4	0
16. Swearing two witnesses at						
	3 <i>d.</i> each . . . . .			0	0	6
Hearing, including calling						
	on cause : judge 2 <i>s.</i> 6 <i>d.</i> ,					
	clerk 1 <i>s.</i> , bailiff 4 <i>d.</i>			0	3	10
Witnesses : plaintiff 5 <i>s.</i> , an-						
	other 5 <i>s.</i> . . . . .			0	10	0

\* See *Doe d. Barnes v. Roe*, 4 Bing. N. C. 737.



Order copy and service : £	s.	d.
judge 1s., clerk 1s., and		
bailiff 6d. . . . .	0	2 6
"Paying in and out of court .	0	1 0
<hr/>		
	£1	4 4

First, it will be observed, that the plaintiff and another are the only witnesses allowed to the plaintiff. He had four in court ready to be examined in confirmation of his statement, but an intimation from the learned judge that his testimony had not been shaken upon a severe cross examination to which he was subjected, was the only reason that not more than one was examined, notwithstanding that witnesses in contradiction were in court, and afterwards were examined by the defendant's solicitor. Lastly, it will be seen that no costs of preparation or investigation are permitted. I am aware that under the act the defendant is expressly exempted from paying the costs of employing an attorney, less than 5*l.* having been recovered; but surely this must be intended to mean the employment, payment for which is awarded in other cases by the same section, which is that of "*appearing or acting on behalf of any person in the said court,*" and it cannot mean that acts done out of court, especially after the plaint has been entered, are not costs in the cause? Indeed, the disallowing the fee for advocacy is a grievous injustice, but to disallow all the costs of the professional assistance rendered, is to place parties upon unequal terms, as a rich defendant may thus obtain a most undue advantage over a poor plaintiff, and *vice versa*. In the present case the plaintiff has incurred a considerable professional charge for investigating the circumstances of the dispute, collecting the evidence necessary to substantiate the claim,

and to rebut the unjust defence set up; and finally, in paying his solicitor for carrying the cause into court to a successful issue; and yet not one farthing of this expense can be recovered from the defendant, who has detained from the plaintiff his just demand. The costs of recovery will far exceed the debt, and must form to all practical minds the best illustration of the value which is to be assigned to this act, passed ostensibly for "*the more easy recovery of small debts and demands.*"

It is worthy of remark, that had the plaintiff and defendant resided twenty miles apart, the action might have been tried in the superior courts, and the defendant must have been visited with costs to the amount of three times as many pounds as he has to pay shillings, which is in effect to make a plaintiff's right to recover costs depend upon the strange circumstance of the relative situation of the place of his abode. I am, sir,

Your most obedient servant,  
SAMUEL B. LAMB.

Reading, 27th April, 1847.

#### ATTORNEYS' GOWNS.

WE hear that many of the attorneys who attend the New County Courts have appeared in Gowns; and through many of the Agency Offices orders are given for a large supply of these robes. Of course there can be no doubt of the right of the attorneys to appear in the costume anciently belonging to them, and we think it is desirable they should do so, whenever they act in the character of advocates.

#### FEES OF THE HOUSE OF COMMONS.

##### FEES TO BE PAID BY THE PROMOTERS OF A PRIVATE BILL.

On the deposit of the Petition, Bill, Plan, or any other Document, in the Private Bill Office - - - - -	£	s.	d.
For every day on which the Examiners shall inquire into the compliance with the Standing Orders - - - - -	5	0	0
	5	0	0

##### *For Proceedings in the House.*

On the presentation of the Petition for the Bill - - - - -	5	0	0
On the First Reading of the Bill - - - - -	15	0	0
On the Second Reading of the Bill - - - - -	15	0	0
On the Report from the Committee on the Bill - - - - -	15	0	0
On the Third Reading of the Bill - - - - -	15	0	0

Bills from the Lords, commonly called Estate Bills, Divorce Bills, Naturalization Bills and Name Bills, to be charged only one-half of the preceding Fees.

The preceding Fees on the Petition, First, Second, and Third Readings, and Report to be increased according to the money to be raised or expended under the authority of the Bill for the execution of any work, in conformity with the following scale:—

If the sum be 50,000*l.*, and under 100,000*l.* twice the amount of such Fees.

„	100,000 <i>l.</i>	„	200,000 <i>l.</i> three times	„	
„	200,000 <i>l.</i>	„	300,000 <i>l.</i> four	„	
„	300,000 <i>l.</i>	„	400,000 <i>l.</i> five	„	
„	400,000 <i>l.</i>	„	500,000 <i>l.</i> six	„	
„	500,000 <i>l.</i>	„	750,000 <i>l.</i> seven	„	
„	750,000 <i>l.</i>	„	1,000,000 <i>l.</i> eight	„	
„	1,000,000 <i>l.</i>	„	1,500,000 <i>l.</i> nine	„	
„	1,500,000 <i>l.</i>	„	2,000,000 <i>l.</i> ten	„	

And at the same rate of increase for every additional 500,000*l.* up to five millions, and further at the like rate of increase for every additional million beyond five millions.

*For Proceedings before any Committee.*

For every day on which the Committee shall sit,—	£	s.	d.
If the Promoters of the Bill appear by Counsel	10	0	0
If they appear without Counsel	5	0	0

FEES TO BE PAID BY THE OPPONENTS OF A PRIVATE BILL.

On the deposit of every Memorial complaining that the Standing Orders have not been complied with	£	s.	d.
	1	0	0

*For Proceedings in the House.*

On the presentation of every Petition against a Private Bill	2	0	0
--	---	---	---

*For Proceedings before the Examiners, or before any Committee.*

For every day on which the Examiners shall inquire into any Memorial complaining of a non-compliance with the Standing Orders	3	0	0
For every day on which the Petitioners appear by Counsel before any Committee	5	0	0
If they appear without Counsel	3	0	0

GENERAL FEES.

On every Motion, Order or Proceeding in the House upon a Private Bill, Petition, or matter not otherwise charged	£	s.	d.
	1	0	0
For Copies of all Papers and Documents, at the rate of 72 words in every folio,—			
If five folios or under	0	5	0
If above five folios, per folio	0	1	0
But if for Members	0	0	6
For the Copy of a Plan made by the parties	1	0	0
For the inspection of a Plan, or of any document	0	5	0
For every Plan or Document certified by the Speaker pursuant to any Act of Parliament	10	0	0
For every day on which any parties shall be heard by Counsel at the Bar, from each side	10	0	0
For every day on which a Committee of the whole House shall sit on a Private Bill or matter	6	0	0
For serving any Summons or Order on a Private Bill or matter	1	0	0
For Riding Charges, if on any Private Bill or matter, per mile	0	1	0
For every Order for the commitment or discharge of any person	1	0	0
For taking any person into custody for a Breach of Privilege or Contempt	5	0	0
For taking any person into custody for any other cause	2	0	0
For every day on which any person shall be in custody	1	0	0
For Riding Charges per mile	0	0	6

*Fees to be taken by the Short-hand Writer.*

For every day he shall attend	£	s.	d.
	2	2	0
For the transcript of his notes, per folio of 72 words	0	1	0

The preceding Fees shall be charged, paid and received at such times, in such manner, and under such regulations, as the Speaker shall from time to time direct.

That every Bill for the particular interest or benefit of any person or persons, whether the same be brought in upon Petition, or Motion, or Report from a Committee, or brought from the Lords, hath been and ought to be deemed a Private Bill within the meaning of the Table of Fees.

## EXAMINATION OF ATTORNEYS.

## RESULT OF EASTER TERM EXAMINATION.

At the examination on the 27th April, 98 candidates were entitled to be examined but four of them did not attend, and eight were postponed.

## TRINITY TERM EXAMINATION.

The Examiners appointed for the examination of persons applying to be admitted attorneys, have fixed Tuesday, the 1st day of June next, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, to take the examination.

The articles of clerkship and assignment, if any, with answers to the questions as to due service, according to the regulations approved by the judges, must be left with the secretary, on or before Friday the 28th of May.

Where the articles have not expired, but will expire during the term, the candidate may be

examined conditionally, but the articles must be left within the first seven days of term, and answers up to that time.

A paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Courts. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each candidate is required to answer *all* the Preliminary Questions (No. 1.); and it is expected that he should answer in *three* or more of the other heads of inquiry,—*Common Law and Equity* being two thereof.

According to the printed List, there are 165 candidates to be examined in Trinity Term, but 52 of these have already passed. On the other hand, there are 10 applicants for examination—whose names are not in the List for admission.

## ATTORNEYS TO BE ADMITTED,

*Trinity Term, 1847.*

(Concluded from page 30, *ante*.)

## Queen's Bench.

*To whom Articled, Assigned, &c.**Clerks' Names and Residences.*

Fletcher, William, 37, Queen Square; Manchester; and Lloyd Square	William Burdett, Manchester
Fenwick, John Clerevaux, 15, Millman St., Queen Street Place; and Stanhope Street, Regent's Park	John Fenwick, Newcastle-upon-Tyne
Glubb, Peter Burke, 20, Featherstone Buildings; and Great Torrington	Hugh Shield, Queen Street, Cheapside
Game, William, Pointington; Temple; and Liverpool	William Gill Glubb, Great Torrington
Gale, Charles Francis, 12, Queen Square	Messrs. Statham and Horner, Liverpool
Gant, James Greaves Tetley, 1, Spring Garden Terrace, Trinity Square; and Bradford	James Bowen May, Queen Square
Gibbon, Henry, 32, Great James Street, Bedford Row	Johnson Atkinson Busfield, Bradford
Gooding, Jonathan Robert, 33, Gower Place, Euston Square; and Norwich	William Henley Gibbon, Great James Street
Holt, Jonathan, 250, High Holborn; Malmesbury; Coventry; and Newgate Street	James Winter, Norwich
Hamer, Thomas Greensit, Wakefield	Andrew Tucker, Charles Street, Blackfriars' Road
Hill, Richard Price, 3 Sergeant's Inn, Fleet Street; and Worcester	C. Ireland Shirreff, Lincoln's Inn Fields
Hallward, Charles Berners, Sweepstone Rectory; and Albany St., Regent's Park	T. Haxby, Wakefield
Hick, Robert, 20, Chancery Lane; and Selby	John Scholey, Wakefield
Hore, Edward Madge, Dulwich Common, Surrey	Charles Cresswell, Worcester
Hartley, John, Bury	G. Price Hill, Soho Square
Hurford, Alexander Samuel, 2, Castle Street, Holborn	Charles Cresswell, Worcester
Haldane, Robert, 29, Old Bond Street; and Old Burlington Street	John Thomas Ambrose, Manningtree
Hemmant, John, Christy's Cottage, Old Kent Road; and Whittlesey	Edward T. Cardale, late of Bedford Row
	Matthew Pearson, Selby
	James Hore, Lincoln's Inn Fields
	William Plant Woodcock, Bury
	John Taylor, Castle Street; and Oxford
	T. G. Norcutt, Queen Square
	John Peed, Whittlesey

- Jarratt, William Otley, 9, Albert St., Mornington Crescent; and Great Driffeld . . . Edmund Dade Conyers, Great Driffeld
- Jennings, Williams, 14, Manchester Street, Gray's Inn Road; and Fellside . . . Silas Saul, Carlisle
- Joachim, Bristow, 34, Gower Place, Euston Square; Lowestoft; and Park Street, Islington . . . Edmund Norton, Lowestoft
- Johnson, Richard, Southport, Lancaster . . . Already admitted in C. P., Lancaster
- Jeffreys, Charles, 7, Bedford Street, Bedford Row; Southampton St.; Glandyfi Castle; and Denbigh . . . Isaac Gilbertson, Bala  
Samuel Edwards, Denbigh
- Janeway, William, Portland Place, North Clapham Road . . . John J. J. Sudlow, Chancery Lane
- Knipe, Francis, 23, Charlotte Street, Bedford Square; Worcester; and Cheltenham . . . John Williams Knipe, Worcester
- Kays, John Henry, 11, Graham Street, Eaton Square; and Sloane Terrace . . . Francis Herbert, Staple Inn  
John Watson, jun., Lincoln's Inn Fields  
John Watson, sen., Wood Street
- Kipping, Thomas, 27, Alfred Street, Bedford Square; and Tonbridge . . . Messrs. Carnell and Gorham, Tonbridge
- Layton, John, 1, Great Bride Street, Liverpool Road . . . Henry Edwards, Ely Place  
John Samuel Warren, Langport, Eastover  
John S. Gregory, Bedford Row
- Louch, John, jun., 12, Featherstone Buildings; Langport, Eastover . . . William Lumb, jun., Whitehaven
- Lumb, James, 12, Featherstone Buildings; Whitehaven; and Tavistock Place . . . John Iliffe, Bedford Row
- Lambert, Alfred, 13, Upper Stamford Street, Blackfriars . . . Edward Richmond Nicholas, Wribbenhall
- Lea, John Wildman Thomas, 1, Arthur Street, Gray's Inn Road; and Areley Kings, Wribbenhall . . . John Lowrey, North Shields (deceased)  
H. Aug. de Medina, Thavie's Inn
- Lowrey, Frederic, 23, Weston Place, Pancras Road . . . Jonathan Nickson, Wem  
Samuel Wainsley, Wem
- Lucas, William, High Street, in Wem . . . Robert Osborne, Bristol
- Lamb, William Frederick, 1, Garden Place, Lincoln's Inn Fields; and Bristol . . . John Lake, Lincoln's Inn
- Lake, George, Mortimer Road, De Beauvoir Town . . . John Lewis, Arundel Street
- Levy, Henry, 7, Arundel Street, Strand . . . Philip Longmore, Hertford
- Lewis, James Price, 21, Liverpool St., King's Cross; Hertford; and Coventry Street . . . Geo. Fred. Prince Sutton, Basinghall Street
- Milward, George, 13, Half Moon Street, Piccadilly . . . James Russell, York
- Meggison, Robert Graham, Newcastle-on-Tyne; and York . . . James Terrell, Exeter  
Henry B. Wedlake, King's Bench Walk
- Mylne, Everard, New River Head . . . Joseph Moore, Lincoln
- Moore, William George, 42, Lothbury . . . John Cleave, Hereford
- Morris, Edward, 6, Southampton Street, Mornington Crescent; Hereford; Wellington Street; and Hampstead . . . George Philcox Hill, Brighton
- Molineux, Joseph, Cordwainers' Hall . . . Thomas Swarder, Hertford
- Medland, William, jun., 31, Surrey Street, Strand; and Salters' Hall . . . Messrs. Newman and Lyon, Yeovil
- Norman, George Lewis, Yeovil; and 5, Wigmore Street . . . Robert Southee, Ely Place
- Nickoll, John James, 16, Ely Place, Holborn . . . John Ord, York
- Ord, John Charles, 2, Cumberland Terrace, Regent's Park . . . Edward Griffith Powell, Carnarvon
- Owen, Thomas, 21, New Ormond Street; and 10, Angel Street, Islington . . . Thomas Leigh, George Street, Mansion House
- Perkin, Henry Thornton, 19, Adle Street, Wood Street, Cheapside; Streatham Hill; and Devonshire Square . . . Richard Weston Parr, Poole
- Parr, William, 17, Portugal Street, Lincoln's Inn; and Poole . . . Francis William Pike, Bedford Row
- Pike, F. Christopher Vernon, 9, Canonbury Terrace, Islington . . .

- Pinchin, John, jun., Winsley, Wilts . . . William Stone, Bradford
- Poole, William Thatchell Henry, 63, Lincoln's Inn Fields; Stoke-under-Hamdon; 10, Gray's Inn Place; and Featherstone Buildings . . . John Slade, Yeovil  
John Sherwood, King's Bench Walk
- Poole, William Thearsby, 7, Featherstone Buildings; Carnarvon; Angel Terrace; and New Ormond Street . . . Richard Anthony Poole, Carnarvon  
William Lowe, Tanfield Court, Temple
- Pratt, John Forster, 7, Arthur Street, Gray's Inn Road; and Berwick-upon-Tweed . . . Robert Weddell, Berwick-upon-Tweed
- Pollard, George Octavius, 35, Dorset Street, Portman Square . . . Messrs. Powell, Broderip, and Wilde, New Square, Lincoln's Inn
- Payne, John, 66, Judd Street; Tavistock Place; and Nottingham . . . Edwin Eddison, Leeds  
George Rawson, Nottingham
- Roscoe, William, 4, Holford Street, Clerkenwell; Nether Knutsford; Lower Calthorpe Street; Beaumaris; and Myddleton Square . . . Thomas Roscoe, Nether Knutsford
- Rowlands, John, 27, Alfred Place, Bedford Square; and Chester . . . John F. Maddock, Chester
- Roche, Charles Bennett, Daventry . . . Thomas Corbet Roche, Daventry
- Redmayne, Thomas, jun., Giggleswick . . . Joseph Newton, Furnival's Inn  
J. Champley Rutter, Ely Place
- Robinson, William, 1, Frederick Street, Gray's Inn Road; Richmond; Chatter House Square . . . Henry Allison, Richmond
- Radcliffe, William, Tranmere; and Burton Crescent . . . Thomas Toulmin, Liverpool
- Rowcliffe, Edward Lee, 7, New Ormond St.; and Milman Street . . . Charles Rowcliffe, Stogumber
- Roose, Francis, 33, Upper Montague Street, Montague Square . . . John Iderton Burn, South Square, Gray's Inn
- Reynolds, Henry, Wellington Road, Handsworth; and Stafford . . . Edward Bower, Birmingham
- Stanton, Thomas Knight, Dorchester; 3, Cambridge Street, Hyde Park Square; 70, York Road, Lambeth . . . William Charles Lacey, Queen St., Cheapside  
Jos. Edm. Pool, Walbrook Buildings.
- Smallwood, John, 37, Lower Park Street, Islington; and Birmingham . . . William Spurrier, Birmingham
- Sparrow, John Wm., 70, Upper Seymour St. . . Henry Tiffen, Sudbury
- Stevens, John Robert, 65, Moorgate Street; and Warwick Villas, Maida Hill . . . Christopher Stevens, Havant  
Henry Walker, Southampton Street  
T. N. Farquhar, Sydenham
- Spurr, James Frederick, 28, Everett Street, Russell Square; and Gainsburgh . . . Henry Spurr, Gainsburgh  
Samuel Bellamy, Gainsburgh
- Sansom, Samuel, 66, Judd Street; and Powis Place . . . James Burton, Powis Place
- Salmon, John, 28, Tavistock Place, Tavistock Square; Newcastle-upon-Tyne . . . Thomas Carr, Newcastle-upon-Tyne  
Mark L. Jobling, Newcastle-upon-Tyne
- Selby, Francis Thomas, Spalding . . . Ashley Maples, Spalding  
William Edwards, Spalding
- Smith, Charles Joseph; 5, Willow Terrace, Islington; and Guildford . . . Joseph Hockley, Guildford
- Sampson, Henry Atkins, 28, King Street, City . . . Robert Taylor, Gray's Inn Square  
Sam. Edw. Donne, New Broad Street  
T. H. Devonshire, Austin Friars
- Skipper, George, Hamlet of Thorpe, Norwich; and Grafton Street . . . John Skipper, Norwich
- Stansfield, John Fish, 3, Mornington Place, Hampstead Road; Todmorden; and Accrington . . . James Stansfield, Ewood, near Todmorden
- Score, Charles, 43, Carey Street . . . Charles Score, Austin Friars  
Thomas Turner, Bath
- Selby, John Caleb, 32, Tavistock Place, Tavistock Square; and Sheerness . . . Knowles King, Maidstone  
Robert Edmeades, Sheerness
- Slater, William, 10, Lower Calthorpe Street; and Manchester . . . James Saunders, Manchester
- Smith, Robert, 18, Baker Street, Clerkenwell; Warwick; and Norfolk Street . . . Samuel William Haynes, Warwick

Stoker, John George, Newcastle-upon-Tyne	John Clayton, Newcastle-upon-Tyne
Townsend, James Copleston, Plymouth	William Richard Bishop, Exeter
Taylor, John, jun., Leverington Parson Drove, Ely; and 2, Green Terrace, Clerkenwell	Thomas Ayliff, Holbeach
Turner, Llywelyn, 21 and 11, New Ormond Street; and Carnarvon	Richard Anthony Poole, Carnarvon
Tarleton, Francis Willington, 9, Phoenix St., Clarendon Square	John Willington Tarleton, Wednesbury
	R. H. Tarleton, Birmingham
	F. W. Wilson, Sheffield
Thomas, William Joseph, 4, Canonbury Park, Islington; Brecon; and Hereford	Alfred Rendall, Hay
Thomas, David, Carmarthen	Lewis Morris, Carmarthen
Tennant, Edmund, 8, Arthur Street, Gray's Inn Road; and Peterborough	John Gates, Peterborough
Tudor, James, Kidderminster	William Boycott, Kidderminster
Witchell, Edwin, Stroud	William Thomas Paris, Stroud
White, John, jun., 9, Grosvenor Place, Cambridge Road	John White, Barge Yard, Bucklersbury
Witley, Henry, 24, Trinity Square; and Colchester	Samuel Witley, Colchester
West, Frederick, 20, John Street, Pentonville; Peckham; and Highgate	Thomas Lott, Bow Lane
Wilkinson, William, 2, Upper Charles Street, Northampton Square; and Morpeth	George Brumell, Morpeth
Wills, Thomas Edward, 2, Regent Place, West, Regent Square; and Shaftesbury	Thomas Wills, Shaftesbury
White, George Graham, 31, Charrington St., Clarendon Sq.; St. Austell; and Arthur Street	William Shilson, St. Austell
Whitehead, Thomas William, 14, Elizabeth Terrace, Liverpool Road	Henry Whitehead, Rochdale
Woodhouse, Josh. Carpenter, 53, Frederick Street, Gray's Inn Road; and Leominster	James Thomas Woodhouse, Leominster
Winfred, William, 6, Elysium Row, Fulham; and 31, Hart Street, Bloomsbury	Charles Addis, Great Queen St. Westminster
Withall, William Henry, 7, Parliament Street, Westminster	John Gregson, Bedford Row
Walpole, William Sturman, Norwich Beyton Lodge, near Bury St. Edmund's; and Clarendon Square	Articled, by the name of William Walpole, jun., to Jonas Walpole, Northwold, near Stoke Ferry, Norfolk
Wright, William, Settle	John Fearenside, Burton-in-Kendal
	John Cowburn, Settle
Wallis, George Oakes, 13, King Street, Portman Square; and Derby	William Eaton Mousley, Derby
Welstead, Frederick, 15, Cadogan Terrace, Chelsea	Julius Gaborian Shepherd, Feversham
Worthington, Thomas, 6, Myddleton Square; and 60, Carey Street, Lincoln's Inn	Edward Trollope, Carey Street
Wetherfield, George Manley, 5, Union Place, City Road	John Thrupp, Winchester Buildings

*To be added to the List for Trinity Term, 1847, pursuant to Judges' Orders.*

Bussell, Edward Reuben, 24, Gerrard Street, Islington; Winckworth Buildings; East Road, City Road; and Gloucester	Francis Buchanan Hoare, 66, St. James's St.
Cambridge, John, jun., Bury St. Edmunds	John Cambridge, Bury St. Edmunds
Campbell, William Knight, 8, Craig's Court, Charing Cross	John Wadsworth, Nottingham
Fearnhead, Charles Peter, 8, Clifford's Inn	Peter Fearnhead, Clifford's Inn
Hawthorn, Edwin Herbert, Uttoxeter; and Cheadle	Richard Lowe, Cheadle
Hayward, Charles Edwards, 7, Featherstone Buildings, Maddox Street	Thomas Waters, Winchester
Lloyd, Alexander Evan, 12, John Street, Adelphi; Chester; and Bruton Street	B. M'Leod, Temple
	David Williams, Pwllheli
	Anthony W. Irwin, Gray's Inn
	Charles W. Potts, Chester
Spicer, Ralph North, 25 and 17, Great Ormond Street	Ralph Spicer, Great Marlow
	G. Waller, jun., Finsbury Circus

# ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

## Courts of Equity.

### LAW OF WILLS.

[THE plan is here pursued of giving a separate section of the Digest, comprehending all the decisions on one important subject, instead of interspersing them generally amongst other subjects. The cases on the Law of Wills are sufficiently numerous to constitute a section of themselves, in like manner as we have arranged the Law of Costs, Attorneys, Evidence, Arbitration, &c. The Law of Railways and other Joint Stock Companies;—the Poor Law and Magistrates' Cases;—and other important heads of Law and Practice, may also be separated from the other decisions of the Superior Courts. The points thus collected will serve as supplements to the Treatises on the subjects to which they relate, and furnish a very convenient compendium both for the student and the practitioner.]

#### ABSOLUTE INTEREST.

Absolute interest cut down to a life interest for a limited purpose, held to remain absolute upon failure of that purpose.

A testator bequeathed his residuary estate in terms which, in the first instance, gave absolute interest to his children, but he directed half only of his daughters' shares should be transferred to his daughters at 21, or marriage, and the other settled on them for life, with remainder to their children. There were gifts over in events which did not happen. A daughter attained 21, and died without having been married. *Held*, that as to her moiety directed to be settled, she had an absolute interest, subject to the rights of her children, and there being none, her representatives were entitled to that moiety. *Winckworth v. Winckworth*, 8 Beav. 576.

#### ACCUMULATION.

A testator bequeathed the residue to trustees, for the maintenance of his five children during their respective minorities, and he directed them to accumulate the surplus income, "for the benefit of the residuary legatees, and form part of the residue of his estate," and subject as aforesaid, on trust to pay, &c., the residue to his five children, at 25, in certain shares, but their shares to be vested at 21, &c.; and at that age they were entitled to receive all the interest upon what should then appear to be their "respective shares." He authorised advancements to be made to his sons, to be deducted out of their shares before any "final division." One child having attained her proper age, received her share of the then aggregate fund. *Held*, that she retained no

interest in the subsequent accumulations accruing during the minorities of the other children. *Routh v. Hutchinson*, 8 Beav. 581.

See *Remoteness*.

#### ANNUITY.

See *Foreign Funds*.

#### BEQUEST TO WIDOW.

*Support of herself and child*.—A testator bequeathed a house, &c., to his wife, for the use of herself and his daughter, subject to the following trust:—"That his wife and daughter should live together, and that his wife should take charge and see to the maintenance and support of his daughter during her minority, with the instructions of H. C." He also gave 100*l.* to his wife, in addition to the house, &c., for the further support of herself and his daughter. *Held*, that the widow took absolutely, subject to a trust for the maintenance and support of the daughter during her minority, and which did not cease upon her marriage under age. *Conolly v. Farrell*, 8 Beav. 347.

Case cited in the judgment: *Pride v. Fooks*, 2 Beav. 430.

See *Lapsed Bequest*; *Residuary Bequest*.

#### CHILDREN.

*Second husband*.—Under limitations in a will to a married woman, her husband and children, *held*, on the context, that the children of her second marriage took nothing.

Bequest to a married daughter for life, and if she survived her husband and children, to transfer it to her, but if she left children, then to her husband, Captain W., for life, with remainder to her children, with a gift over, in the event of her dying in the lifetime of her husband without leaving children. She died, leaving children by Captain W., and by a second marriage. *Held*, that the latter were not entitled to participate in the fund. *Stopford v. Chaworth*, 8 Beav. 331.

#### CUMULATIVE LEGACIES.

*Substitutional legacies*.—Testator, by his will, gave to his son 20*l.*, to be paid within one month after his death, and 500*l.* to his executors, in trust to pay 50*l.* to his son every six months, the first payment to be made 6 months after his death; and to such female servants who might be in his service at his decease 5*l.* a piece for mourning. By a codicil he gave 2,000*l.* to Bridget Bibby, in consideration of her faithful services, and directed that sum to be paid to her within six months after his decease. By a subsequent testamentary instrument, which purported to be his last will, but which he left unfinished, he gave 19*l.* 19*s.* to his son, to be paid within ten days after his death; and to Bridget Bibby, if she should be in his service at his decease, 500*l.*, to be paid at the end of nine months after his decease. B. Bibby was the only female servant who was in the testator's service at his decease.

*Held*, that the legacies of 19*l.* 19*s.* and 500*l.* were substitutions for the legacies of 20*l.*, 5*l.*,

and 2,000*l.*, previously given to the son and B. Bibby respectively. *Kidd v. North*, 14 Sim 463.

Cases cited in the judgment: *Hemming v. Gurrey*, 2 Sim. & Stu. 311; 1 Bligh, N. S. 497; *Attorney-General v. Harley*, 4 Madd. 263; *Jackson v. Jackson*, 2 Cox, 35.

#### DISTRIBUTIONS, STATUTE OF.

*At what time persons entitled.*—Testator directed his trustees to pay the dividends of certain stock to his wife for life, and, after her decease, to transfer the capital to such person or persons, in such shares and proportions, at such times, and in such manner, as might be expressed in any codicil or codicils to his will; and, in default of such direction or appointment, to transfer and make over the same unto such person or persons as would, under and by virtue of the Statutes of Distribution of Intestates' Estates, have been entitled to his personal estate in case he had died intestate. The testator died without making any appointment by codicil, leaving his wife surviving him. The wife afterwards died: *Held*, that the fund belonged to those who, at the testator's death, and not to those who, at the widow's death would have been entitled to his personal estate in case he had died intestate; consequently, that the widow was entitled to a distributive share of the fund. But, *semble*, that there was no joint tenancy between the widow and the next of kin of the testator living at his death; and, therefore, that the widow, having survived those next of kin, was not entitled to take the whole fund by survivorship. *Jenkins v. Gower*, 2 Coll. 537.

Cases cited in the judgment: *Clapton v. Bulmer*, 10 Sim. 440; *Garrick v. Lord Camden*, 14 Ves. 372.

#### ELECTION.

*Heir at law and residuary legatee.*—*Heritable bond.*—The testator, who was a Scotchman domiciled in England, devised all the rest and residue of his real, personal, and mixed estates and effects, whatsoever and wheresoever, which he might be seised or possessed of or entitled to at the time of his decease, upon trust for his children, in certain shares. One of the children being the heir at law of the testator, became entitled, according to the law of Scotland, to a heritable bond made by a debtor of the testator after the date of the will, and given as a security for a debt which was owing to him at the time the will was made: *Held*, 1st, that the heir was not a trustee of the heritable bond for the executors of the testator; and secondly, that he was not bound to elect between the heritable bond and the benefits to which he was entitled under the will. *Allen v. Anderson*, 5 Hare, 163.

Cases cited in the judgment: 1st point, *Drummond v. Drummond*, cited in *Brodie v. Barry*, 2 Ves. & Bea. 127, 132; *Johnstone v. Baker*, 4 Madd. 474, n.; *Duchess of Buccleugh v. Hoare*, 4 Madd. 467; *Jerningham v. Herbert*, 4 Russ. 368, 2nd point, *Churchman v. Ireland*, 21 Russ. & Nyl. 250; *Pole v. Lord Somers*, 6 Ves. 309, 319; *Judd v. Pratt*, 13

Ves. 168; *Dummer v. Pitcher*, 2 Myl. & K. 262; *Brodie v. Barry*, 2 Ves & Bea. 127, 132.

#### ESTATE TAIL.

Testator devised lands to his son A. T. for life, and after the decease of A. T., to his first son lawfully issuing, and for default of such first issue, to the use of the second, third, and every other son, and the heirs of his or their bodies, the elder to be always preferred before the younger of such sons and heirs of his body; and for default of such issue, then to the use of all and every the daughters of A. T., and the heirs of the body of such daughter and daughters, with remainders over.

*Held*, that the first son of A. T. took, neither by construction nor by implication, an estate tail, but a life estate only. *Barnacle v. Nightingale*, 14 Sim. 456.

#### EVIDENCE.

See *Executor*.

#### EXECUTOR.

*Evidence.*—A testator appointed A. and B. his executors, and he gave them all his personal estate, "that is to say, for you to pay all as follows." He then gave several legacies, and afterwards said,—"I wish all this to be paid in six months after my death." *Held*, under the 1 W. 4, c. 40, that the executors did not take the unexhausted residue beneficially, but in trust for the next of kin.

The 1 W. 4, c. 40, requires, that the intention that the executor should take beneficially should appear by the will.

Parol evidence is now inadmissible to show that the testator intended his executors to take the residue beneficially. *Love v. Gaze*, 8 Beav. 472.

#### FOREIGN FUNDS.

*Annuity.*—*Discretion of Trustees.*—The testator gave to the executors and trustees appointed by his will so much of his personal estate as would produce a certain annuity, upon trust to select, appropriate, and set apart the same, in their uncontrolled discretion, and pay the interest, dividends, and annual produce thereof for her life or widowhood; and if the annual produce of the personal estate and effects so set apart and appropriated should from any cause be increased or reduced, his widow was to receive such increased or reduced interest, dividends, and annual produce; and from and after her decease or second marriage, the testator directed that the personal estate and effects so appropriated or set apart shall fall into his residuary estate. And the testator empowered his trustees, at their own discretion, to permit the whole or any part of his personal estate to remain on the securities on which the same might happen to be at his decease, or otherwise to convert and alter the same at their own absolute discretion. The testator's personal estate was invested in foreign funds. The trustees did not exercise their discretion as to the appropriation of the investments to answer the annuity, but submitted to act as



the court should direct: *Held*, that the court would not direct any appropriation of the foreign funds to answer the annuity to the widow, but would direct the annuity to be raised by the purchase of consols, referring it to the Master to inquire what part of the existing investments it would be proper for that purpose to call in, having regard to the investments of other parties under the will. *Frendergast v. Lushington*, 5 Hare, 171.

#### HEIR AT LAW.

See *Election*; *Revocation*, *Conditional*.

#### HERITABLE BOND.

See *Election*.

#### INCOMPLETE TESTAMENTARY PAPER.

*Substitution of legacies*.—A legacy given by an incomplete testamentary paper held to be in substitution for two legacies of greater amount given to the same party by a previous will and codicil.

If an incomplete testamentary paper, made before the 1st January, 1838, contains internal evidence of an intention to make an entirely new disposition, and for that purpose to undo all that had been done by a previous complete will, the court will give effect to the new disposition as far as it goes, in substitution for the former, but will treat the former one as operative so far as no substituted disposition is provided in its place. *Kidd v. North*, 2 Phill. 91.

Cases cited in the judgment: *Jackson v. Jackson*, 2 Cox, 35; *Attorney-General v. Harley*, 4 Madd. 263; *Heming v. Clutterbuck*, 1 Bl. N. S. 479; *Fraser v. Byng*, 1 Russ. & My. 90.

#### 'ISSUE.'

1. Testatrix bequeathed her personal estate to her sisters, or, in case of the death of either or any of them having *issue*, then the share of her so dying to go to such *child or children* equally.

All the testatrix's sisters died in her lifetime, without leaving any child or children living at the testatrix's death, but one of them left two grandchildren living.

*Held*, that the word "issue" meant "child or children," and consequently that, in the events that happened, the testatrix's estate was undisposed of. *Goldie v. Greaves*, 14 Sim. 348.

2. Bequest to testator's brother and sisters, A., B., and C., for their several lives, share and share alike, and after the decease of either of them, then, as to the share or shares of one or either of them so dying, the testator bequeathed the same to the "issue of the body or bodies of him, her, or them so dying, begotten by their present husbands," share and share alike, for ever. Assuming that A., B., and C. took life estates only in the fund, the court was of opinion that the words "issue of the body," &c., comprehended not only children but grandchildren and more remote descendants of A., B., and C. *Evans v. Jones*, 2 Coll. 516.

Cases cited in the judgment: *Taylor v. Langford*, 3 Ves. 118; *Walker v. Shore*, 15 Ves. 122.

#### JOINT TENANCY.

Testator bequeathed his residuary personal estate to trustees, in trust to pay the interest to and amongst all the children of his brother, for their respective lives, and after their deaths, as they should respectively die, he gave the principal of their *respective* shares to their *respective* children; and if any of his brother's children should die without leaving any child, he gave their shares to their surviving brothers and sisters for life, and afterwards to their respective children, in the same manner as their original shares were given. One child of the testator's brother had three children, one of whom was born after the testator's death, and that child and another died in their parent's lifetime.

*Held*, that on the death of the parent, the surviving child became entitled to the whole share of which the parent had been tenant for life. *Amies v. Skillern*, 14 Sim. 428.

See *Per Stirpes*; *Power of Appointment*.

#### LAPSED BEQUEST.

*Devisee or legatee's death*.—*Republication*.—The testator, by a will made before the Wills' Act (7 W. 4, and 1 Vict. c. 26) came into operation, bequeathed a share of his residuary estate to one of his sons, who was also thereby made one of the devisees in trust and executors of his estate. The son died after the Wills' Act came into operation, leaving issue; and after his death, the testator made a codicil to his will, altering a bequest to another child, but in other respects confirming his will: *Held*, that the gift to the son did not lapse, but that the same, so far as it was real estate, descended to the heirs-at-law of the son, and so far as it was personal, to his executrix, under a will made before the Wills' Act came into operation.

That, under the 34th section of the Wills' Act, the effect of the re-publication of the will by the codicil, was the same as if the testator at the date of the codicil made a will in the words of the will so republished. *Winter v. Winter*, 5 Hare, 306.

#### LEGACY.

1. *Residue*.—*Expense*.—The testator gave his real and personal estate to his executors, upon trust, after conversion and payment thereof of his debts, funeral and testamentary expenses, and legacies, to stand possessed of the residue, and divide the same into ten equal parts or shares, which he bequeathed to ten persons named in his will, and he declared that if the net residue of his property, after payment of the debts, &c., should exceed 10,000*l.*, then 10,000*l.*, only should be applicable to the said trusts, (1,000*l.* to each share); and in that case the testator gave the residue of his said property beyond the sum of 10,000*l.* to his nephews and nieces in equal shares. The net residue after the payment of debts, &c., exceeded 10,000*l.* One of the 10th shares of the 10,000*l.* lapsed by the death, in the testator's life-time, of one of the legatees: *Held*, that the lapsed share of 1,000*l.* did not pass as residue to the nephews and nieces, but was undisposed of. *Green v. Pertwee*, 5 Hare, 249.

2. *Set-off.*—*Debt.*—Where a debt to the estate of a testator may be set-off by the executors, against a legacy bequeathed by the testator to the debtor, such debt may also be set-off against a legacy bequeathed by the testator to the wife of the debtor, subject to her equity (if any) in the legacy. *M'Mahon v. Burchell*, 5 Hare, 325.

See *Cumulative Legacies ; Election ; Incomplete Testamentary Paper ; Lapsed Legacy ; Misdescription ; Specific Legacy.*

#### MARSHALLING OF ASSETS.

Additional legacy to A., charged upon real and personal estate ; other legacies not charged upon the real estate ; if A. exhaust the personal estate, other legatees shall have satisfaction out of the real estate devised.—*Ambl.* 127. *Hanby v. Fisher*, 2 Coll. 512, n.

#### MISDESCRIPTION OF LEGATEE.

1. Testatrix bequeathed 200*l.* reduced annuities, standing in her name, to her nephew. That bequest was copied from a prior will, at the date of which she had 200*l.* reduced annuities standing in her name. Afterwards she sold that sum, together with certain additions which she had made to it, and invested part of the proceeds in 25*l.* long annuities : *Held*, that the long annuities, which were the only stock that she was entitled to at the date of her last will, and at her death passed to her nephew. *King v. Wright*, 14 Sim. 400.

2. Bequest to John Newbolt, second son of William Strangways Newbolt, vicar of Somerton. The vicar of Somerton was William Robert Newbolt. His 2nd son was Henry Robert, and his 3rd son, John Pryce : *Held*, that John Pryce was entitled to the legacy. *Newbolt v. Pryce*, 14 Sim. 354.

#### PARENT AND CHILD.

See *Settlement.*

#### PERPETUITY.

*Remoteness.*—Testator gave his freehold and copyhold estates and his personal estate to certain persons (whom he appointed his executors), in trust, out of his personal estate and by sale or mortgage of his freehold and copyhold estates, to raise money sufficient to pay his debts, funeral expenses, and legacies, and out of the rents and interest of so much of his real and personal estate as should not be sold or disposed of for those purposes, to pay certain annuities and such sums as his trustees should think sufficient for the maintenance of his son John and his children, (if he should have any,) and to accumulate the residue of the rents and interest during the life of John, and after John's decease, to stand seised of his real estates, in trust for John's first son and the heirs of the body of such first son, "successively as they should be in priority of birth, and for the several and respective heirs of the body and bodies of every such son, and, for default of such issue," for A. for life, with remainder to his sons in tail, with remainder to B. and his sons, and to C. and D., and their

sons in like manner, with remainder to his own right heirs for ever ; and he declared that his trustees and executors should stand possessed of his personal estate after John's death, in trust for such person and persons, in the same order and succession, and for such and the same estates and interests as were thereby declared concerning his real estates, so far as the nature of the property, the rules of law and equity, the deaths of parties, and other contingencies would admit of. The testator died in 1780 ; his son John was his heir-at-law and customary heir. John and A., B., C. and D. died without issue.

*Held*, that the trusts subsequent to the trust for the first son of John were not void for remoteness, and that the ultimate trust of the personal estate, as well as of the freehold and copyhold estates, vested, on the testator's death, in his son John, as his heir-at-law at his death. *Boydell v. Golightly*, 14 Sim. 327.

See *Remoteness.*

#### PER STIRPES.

*Joint tenants.*—*Substitution.*—Gift to A. for life, with remainder to the daughters of B., "and their descendants, *per stirpes*, to hold to them, their heirs, and assigns for ever." The daughters had children at the death of the testator and of the tenant for life : *Held*, that the daughters took absolute interests and in joint tenancy, and that the issue could only take by substitution.

The words *per stirpes* held to impart not only distribution, but succession or some species of representation. *Dick v. Lacy*, 8 Beav. 214.

Case cited in the judgment : *Pearson v. Stephen*, 5 Bli. 203 ; 2 Dow. & Cl. 328.

#### POWER OF APPOINTMENT.

*Joint tenancy.*—A bequest of property to be at the disposal of the testator's wife, for herself and children, does not give the widow the power of appointment, or make the widow and children tenants in common, but creates a joint tenancy. *Crockett v. Crockett*, 5 Hare, 326.

Case cited in the judgment : *Raikes v. Ward*, 1 Hare, 445.

#### PRECATORY WORDS.

See *Trust.*

#### QUALIFYING GIFT.

Illustration of the distinction between a direction in a will which goes to cut down or qualify a prior absolute gift, and one which only goes to regulate the mode in which such gift shall be dealt with and enjoyed. *Gompertz v. Gompertz*, 2 Phill. 107.

#### REMOTENESS.

*Perpetuity.*—*Accumulation.*—Testator devised his estates in trust for the plaintiff for life, with remainder to his first and other sons in tail male, with remainders over ; and directed that, if any person for the time being entitled to the possession of the estates should be under 21, the trustees should, so long as the person so entitled should be under 21, receive the

rents and apply a competent part thereof for his maintenance and invest the surplus in their names on government or real security, and from time to time receive the income thereof and invest the same in like securities, so that the same might accumulate, and should stand possessed of such surplus rents, together with the accumulations thereof, upon trust to invest the same from time to time in the purchase of real estates, to be forthwith settled to the uses and upon the trusts thereby declared of the devised estates. *Held*, that the trust was void for remoteness. *Browne v. Stoughton*, 14 Sim. 369.

See *Perpetuity ; Accumulation*.

#### REPUBLICATION OF WILL.

See *Lapsed Bequest*.

#### RESIDUARY BEQUEST.

1. Testator bequeathed all his personal estate, except the money laid out in stock, mortgages, and bonds, to *A.*; and as to his money in stock and on mortgages and bonds, he gave the same to *B.* The gift to *B.* failed by an event analogous to a lapse: *Held*, that the property which was intended to be given to *B.* passed under the residuary bequest to *A.* *Evans v. Jones*, 2 Coll. 513.

Cases cited in the judgment: *Cambridge v. Rous*, 8 Ves. 12, 25; *Leake v. Robinson*, 2 Mer. 363, 392.

2. A testator gives to *A. B.* the residue of his personal estate, except certain South Sea stock, which he gives to *C. D.* The stock is afterwards converted into money. It falls into the residue given to *A. B.* *Wingfield v. Newton*, 2 Coll. 520 n.

See *Election ; Legacy*.

#### REVERSIONARY INTEREST.

*Limitation "to and for the benefit of the executors and administrators of a tenant for life."*—A sum of money was bequeathed in trust for several tenants for life in succession, with remainder to such person or persons as one of them, who was a married woman, should by will appoint, and in default of such appointment, "to and for the benefit of her executors or administrators." The lady died without making any appointment. *Held*, that her personal representative took the reversionary interest in the fund, not beneficially nor in trust for her next of kin, but as part of her estate. *Attorney-General v. Maitin*, 2 Phill. 64.

Cases cited in the judgment: *Saberton v. Skeels*, 1 Russ. & M. 587; *Walton v. Makin*, 6 Sim. 148; *Daniel v. Dudley*, 1 Phil. 1; *Smith v. Dudley*, 9 Sim. 125; *Bulmer v. Jay*, 4 Sim. 48; 3 M. & K. 197; *Graffley v. Humpage*, 1 Beav. 46.

#### REVOCATION, CONDITIONAL.

*Forfeiture. — Heir.*—Testator, after giving certain benefits to his heiress at law, out of his real estates, revoked them, and gave them over, in case she should dispute his will or his competency to make it, or should not confirm it when required by the trustees.

*Held*, that the clause of revocation and gift over were valid. *Cooke v. Turner*, 14 Sim. 493.

Case cited in the judgment: *Stapilton v. Stapilton*, 1 Atk. 2.

#### SETTING-OFF DEBT.

See *Legacy*.

#### SETTLEMENT.

1. *Parent and child*—So long as property to which a married woman becomes entitled under an intestacy remains in the hands of the administrator, and she and her husband have done nothing to point out the mode in which they wish the fund to be dealt with, their child cannot enforce its equity to a settlement. *Winch v. Brutton*, 14 Sim. 379.

2. If a testator directs his real estate to be settled on his son, his heir apparent, for life with remainder to the first and other sons of his sons, in tail, with remainder to *A.* for life, with remainder to his first and other sons in tail, with remainders to other persons and their sons in like manner, and ultimately, *on his own right heirs*; and his personal estate to be settled on the same persons, in the same order and succession, and for the same estates and interests, so far as the nature of the property and the rules of law and equity will admit of, the court, if a suit is instituted immediately after the testator's death, for the purpose of having a settlement made, will order the ultimate limitation of the personal and real estate to be made to the person who is the testator's heir. *Boydell v. Golightly*, 14 Sim. 328.

#### SPECIFIC LEGACY.

Upon the construction of a will: *Held*, that certain legacies of stock, and of money on mortgages, bonds, &c., were specific. *Evans v. Jones*, 2 Coll. 516.

#### SUBSTITUTIONAL LEGACIES.

See *Cumulative Legacies ; Incomplete Testamentary Papers ; Per stirpes*.

#### TAIL, ESTATE.

See *Estate Tail*.

#### TRUST.

1. *Precatory words.*—A direction in a will that certain persons should be employed as against a manager of testator's estates whenever his trustees should have occasion for the services of a person in that capacity: *Held*, not to create a trust which such person could enforce. *Finden v. Stephens*, 2 Phill. 142.

Case cited in the judgment: *Shaw v. Lawless*, 5 C. & F. 129.

2. *Precatory.*—Testator, after reciting that he was desirous of making a suitable provision for his wife, as well as for his daughter and grandchild, in order to mark his unbounded confidence in his wife, and his belief that she would be actuated by the most maternal regard towards his child, gave her all his property, for her own use, benefit, and disposal absolutely, implicitly relying on her attachment to his daughter and granddaughter. He then directed

his executors to sell his property, and to invest the proceeds on government or real securities, in his wife's name alone, or jointly with his executors (with power to change the securities): "To hold the same, unto my wife for her own absolute use, benefit, or disposal: And whereas I have hereby manifested abundant proof of entire confidence in my said dear wife, by thus giving her the sovereign control over the whole of my property, for her sole use and benefit, which she will duly appreciate accordingly; but, in so doing, I nevertheless earnestly conjure her, under the advice of my executors, to proceed, forthwith, to make ample provisions, by deed or will, for our only child and grandchild." The will concluded with a power to the wife, who was executrix, and to the executors, to retain their expenses out of the testator's estate: Held, that no trust was ordered by the will, in favour of either the daughter or the granddaughter. *Winch v. Brutton*, 14 Sim. 379.

See *Foreign Funds*.

#### WIDOW.

See *Bequest*.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Lord Chancellor.

*Arnold v. Arnold*. April 30, and May 8, 1847.

NEW ORDERS (Nos. 16, (ART. 33,) 66 AND 68).—CONSTRUCTION.—THE LAST OF SEVERAL ANSWERS.—DISCHARGING ORDER OF COURSE.

The terms "the last answer," and "the last of several answers," used respectively in the several orders of May, 1845, numbered 16, (Art. 33,) 66 and 68, refer to the answers put in by the last substantial defendant who has been served with subpœna to appear and answer. Therefore a plaintiff may obtain one order of course for leave to amend at any time within four weeks after the last of several of such defendants has put in a sufficient answer; but this indulgence does not extend to cases where a defendant is merely nominal, or has not been served with subpœna to appear and answer.

To discharge on merits, or otherwise than for irregularity, an order of course to amend obtained at the Rolls in a cause attached to another court, application must be made to the Lord Chancellor.

Mr. Cooper stated that this was an appeal motion from a decision of the Master of the Rolls. The cause was attached to the court of the Vice-Chancellor Wigram, and the plaintiff had obtained at the Rolls an order of course to amend; under the New General Orders of May, 1845, No. 16, Art. 33, which order to amend his lordship had on motion refused to discharge, as it was not irregular, and as he could not

enter into the merits of a cause not attached to his court. *Arnold v. Arnold*, 33 L. O. 566. The point in the present case involved the construction of the words "last answer" and "the last of several answers," as used in the above order and in Nos. 66 and 68 of the same orders, and the question was, whether they implied the last answer filed or the last answer to be filed. Here there were several defendants, some of whom had not answered, but more than four weeks had elapsed since the last answer of those who had answered was to be deemed sufficient. The case of *The King of Spain v. Hullett*, 3 Sim. 338, decided, that under the corresponding order of the old practice (13th Order of April, 1828,) it was irregular to obtain this order of course after the time had elapsed as to all those defendants who were within the jurisdiction, although no answer had been filed by another alleged to be out of the jurisdiction. The learned counsel then referred to *Cooke v. Betham*, 1 Coop. 403; *Foreman v. Gray*, 33 L. O. 452 & 568, (called *Freeman v. Gray* at the first reference); *Arnold v. Arnold*, 33 L. O. 566; and *Dalton v. Hayter*, 7 Beav. 586, (31 L. O. 112); he was proceeding with his argument when

The Lord Chancellor having remarked that the words in the 66th Order clearly meant the last answer to which a replication might be filed, inquired if all the defendants had been served with subpœna to appear and answer, and the case was directed to stand over until the following seal day.

May 8th. Mr. Elderton stated that some of the defendants had not been served, but all who had been had appeared and answered.

Mr. Cooper said, his argument was then at an end, as the case of *Cooke v. Beetham*, (*suprà*), decided that parties not served were not within the old order upon which the present is founded.

Mr. Hare followed on the same side, contending that the last answer must mean the last answer on the file, and that as each answer came in a new right accrued to the plaintiff to amend his bill by obtaining the order of course, and he mentioned a case of *Myers v. Weatherall*, argued before his lordship during the sittings after last Hilary Term, in which the question of applying to this court was raised.\*

Mr. Elderton, *contra*, referred to the cases cited above from the *Legal Observer*. Another ground of objection was, that the other side were wrong in coming here to make the application. If there had been delays, the defendants should have moved that the plaintiff should get in the outstanding answers, so that the bill might be taken *pro confesso* as against such as did not answer. This had been defined to be the practice by his lordship in *Masterman v. Lewin*, 33 L. O. 353.

Mr. Cooper, in reply, submitted that they were right in applying to this court.

\* This case was not decided by his Lordship upon this point, but was dismissed as an appeal for costs only.—REPORTER.

The Lord Chancellor thought that it was quite right to make the application to this court. With respect to the words of the Orders, he thought that they were hardly debatable. It was quite clear that "the last answer" could not mean the last answer on the file. The Order never could intend such an absurdity. It must mean the last answer to which replication might be filed, and must therefore contemplate a substantial and not a nominal defendant. The case of the *The King of Spain v. Hullett*, (*suprà*), decided, that the former order did not apply to defendants out of the jurisdiction. There was no doubt that on the merits this order for leave to amend ought to be discharged, but the notice of motion should be amended by leaving out the words "for irregularity."

The order was afterwards discharged by consent, without any fresh notice of motion being required by Mr. Elderton.

### Rolls Court.

*Sanderson v. Williams.* March 11th and April 22, 1847.

#### WITHDRAWAL OF REPLICATION—ENLARGING PUBLICATION.

*The court will, under peculiar circumstances, relax its rule of not allowing evidence to be taken after publication, and for that purpose allowed replication, which had been filed before all the answers were got in to be withdrawn.*

THIS was a motion that publication might be enlarged without prejudice to the depositions of witnesses already taken. The suit was a redemption suit, and the bill was filed in 1844 against three defendants, one of whom only was at the time of filing the bill considered to be materially interested in the questions in the cause. The defendant put in his answer in 1845, and the plaintiff, without getting in the answer of the other defendants, filed his replication. The cause had stood over till the present time, while negotiations were pending which had come to nothing, and the plaintiff was now desirous of prosecuting the cause against all the defendants, and for that purpose of examining witnesses.

Mr. Kindersley and Mr. Hare, for the motion, said, that it was put in its present form to avoid the difficulty attendant upon an application, namely, the endangering any evidence already taken.

Mr. Bloxome, *contrà*, contended, that the plaintiffs had made out no case to entitle them to the indulgence now asked.

Lord Langdale observed, that no answer could be received after replication; it would therefore be necessary that the replication should be withdrawn, and that there was nothing of which the court was more jealous than allowing fresh evidence to be taken after publication; and directed the cause to stand over, that he might obtain more explicit information as to the points upon which it was desired to examine witnesses.

The motion was afterwards renewed, when it appeared that the witnesses were required to prove certain deeds, which were admitted by the party who had answered; but were said not to be forthcoming, and therefore could not be proved as exhibits at the hearing.

Lord Langdale, after stating the facts, said, that the plaintiff had been guilty of great negligence, but it was not to be considered whether the refusal of the motion would not occasion greater inconvenience to all parties than the granting it. If the cause came on under the circumstances now stated, there must be an inquiry whether such deeds as were alleged to have been executed were so executed; and that would occasion fresh delay; but he should for the shortest possible time for publication to pass, which it was reasonable to allow under the circumstances. Ordered that the replication should be withdrawn—that the plaintiff should be at liberty to file a new replication, and that publication should be enlarged to the last day of Trinity Term. The costs to be paid by the plaintiff.

### Vice-Chancellor of England.

*Walsh v. Trevanion.* April 28th, 1847.

#### PRIVILEGED COMMUNICATIONS.—DEMURRER BY WITNESS.

*To support a demurrer to interrogatories asking a witness to produce certain letters and documents, it is not sufficient to allege generally that they were received in a confidential capacity; enough must be stated in the demurrer to show that they were confidential.*

THIS suit was instituted for the purposes of rectifying a marriage settlement, and have it declared that it was intended to comprise a part only of the property described in the general words of the deed. This intention was supposed to be manifested from certain letters and communications which took place with a Mr. Burley, the solicitor to the defendant at the time of the marriage; which letters and communications it was contended formed a valid agreement, and that the alteration afterwards made in the description of the property in the deed was contrary to the intention of the parties. Mr. Burley was examined as a witness by the plaintiff, and to the interrogatories asking him whether there was not in his possession certain writings and correspondence relating to the said settlement he put in a demurrer to the following effect:—"To so much of the 15th and 17th interrogatories as call upon me to produce any correspondence in writing with reference to the settlement I demur, so far as regards any letters I received with reference to the aforesaid matters from Mary Brereton and Charlotte Trelawney, and for cause of demurrer say that such letters do not refer to any particular estates to be settled on such marriage, and I received such letters in my character of confidential solicitor to those ladies, and I therefore submit that I ought not to be called

on to produce the same." And to the interrogatory asking him whether there were not in his possession any books or papers containing any entry relating to or connected with the said marriage settlement, he put in a second demurrer as follows:—"To so much of the 29th interrogatory as requires me to produce and identify the books or papers containing any entries connected with the settlement, I demur, and for cause of demurrer say, that the said book or ledger contains particulars of confidential matters between myself and my clients."

Mr. Stuart and Mr. Beavan, in support of the demurrer, urged that the witness in his demurrer had clearly embodied the rule of law relative to the privilege of an attorney: he had stated that he was the attorney; that the communications were confidential; and that they related to the subject-matter in dispute. That was sufficient. How was it possible to enter into the question of what was contained in the communications? They cited *Parkhurst v. Lowten*, 2 Swans. 194; *Curpmuel v. Powis*, 1 Phill. 687; and *Herring v. Clobery*, 1 Phill. 91.

Mr. Bethell and Mr. Willcock contra.

The Vice-Chancellor said, he could well understand that if the witness had been pressed on the question, he might have stated things which would have been sufficient to show that these communications were confidential. The question was, whether he had done so upon these demurrers. He said that he received the letters in his character of confidential solicitor to those ladies. He might have done so, but he had failed in stating sufficiently that the letters he refused to produce were of a confidential character; that fact was not stated explicitly enough to make it the ground of a lawful objection. As to the second demurrer, that was in itself quite general. He did not say that the entries contained matters of confidential communication with reference to the subject of the 29th interrogatory, as between him and the ladies, or either of them; that he had not by his position of fact made a sufficient ground for protection at law. His Honour therefore overruled the demurrers with costs, but without prejudice to his demurring again.

#### Queen's Bench.

(Before the Four Judges.)

*The Queen v. Na'haniel Shipperbottom.* Easter Term, 1847.

ORDER IN BASTARDY UNDER 8 & 9 VICT. c. 10.

*A person against whom an application is made for an order in bastardy, under the 8 & 9 Vict. c. 10, may appear before the magistrates by attorney or counsel.*

*An order made according to the form given in the schedule annexed to the act, which states that the proof was given in the presence and hearing of the attorney appearing on behalf of the putative father, is sufficient,*

*although it was alleged in a former part of the order that the putative father appeared in person.*

An order in bastardy having been removed into this court by *certiorari*, a rule *nisi* was obtained for the purpose of quashing it. The order was made under the 8 & 9 Vict. c. 10, and followed the form number 8 in the schedule annexed to the act. The order recited the birth of the bastard child; that a summons issued to N. Shipperbottom, the alleged father of the child; that the said N. S. appeared in pursuance of the summons; that the woman having applied to the justices for an order on the said N. S.; and it being now proved to us in the presence and hearing of the attorney attending on behalf of the said N. S., that the said child was, &c. The words "of the attorney attending on behalf of the said N. S." were inserted to fill up the blank left in the form given in the schedule, and the objection taken to the order was, that it did not appear that the order was made in the presence of the putative father.

Mr. Pashley. In convictions the court has held, that it must appear that the witnesses were examined in the presence of the prisoner, but the court has never held that orders are to be construed with the same degree of strictness. When the jurisdiction of the justices is made to appear on the face of an order, the court will make every intendment in favour of its validity.

Mr. Keane, contra, contended that it was evident from the form given in the schedule that it was intended the putative father should be present when the order was made, and the act does not give him any power to appear by attorney.

Lord Denman, C. J. I had some doubts upon the validity of this order, but upon reference to the Forms No. 7 & 8 in the schedule annexed to the act, I find from a note that the legislature contemplated the fact of the putative father appearing by attorney or counsel. This removes my difficulty, and I think the order alleging that proof was given in the presence and hearing of the attorney attending on behalf of the said putative father, is sufficient.

Putteson, J. It is quite clear the legislature intended that the putative father might appear by attorney or counsel, otherwise I should have had some difficulty, because it is stated in the early part of the order that he attended in person, and in a subsequent part of the order that he appeared by his attorney.

Wightman and Erle, J.s concurred.

Rule discharged.

#### Queen's Bench Practice Court.

(Before Mr. Justice Coleridge.)

*Mullins and another v. Ford.* Tuesday, 4th May, 1847.

NOTICE OF TRIAL.—STAY OF PROCEEDINGS. COUNTERMAND.

*Where the plaintiff's replication concludes to the country, he may at once give notice of trial, although issue is not formally joined between the parties.*

*Where a rule nisi contains a stay of proceedings, this only restrains the parties from proceeding with the action, but does not preclude them from countermanding their notice of trial.*

On a former day *Bramwell* obtained a rule calling upon the plaintiffs to show cause why the notice of trial herein should not be set aside for irregularity, with costs, and that in the meantime all further proceedings be stayed. This was an action of detinue, in which the defendant pleaded "*non detinet*," and two special pleas, to which the plaintiffs replied, joining issue on the first plea, and traversing the other pleas, concluding to the country. The defendant had not been ruled to rejoin, but some days after the delivery of the replication the plaintiffs served notice of trial for the Middlesex sittings after the present Easter Term. The present rule was obtained on the ground that the notice of trial was irregular, issue not having been joined between the parties.

*T. W. Saunders* showed cause, and produced an affidavit swearing to the countermanding of the notice of trial in due time, and contended—1st, that the present application was premature and unnecessary, inasmuch as the plaintiffs, by the rules of practice, were at liberty to withdraw their notice of trial as they had done, and that if they proceeded to trial with the pleadings incomplete, the defendant might come and set it aside; 2ndly, that the notice of trial was perfectly regular; the R. G. H. T. 2 W. 4, r. 59, authorising the giving of the notice of trial at the time of delivering the replication, if the latter concludes to the country, even though issue be not then joined.

*Bramwell*. The plaintiffs have violated the present rule, which stays proceedings by countermanding the notice—(*Coleridge, J.*—That merely restrains them from going forwards with the action, here they go backwards,)—they must bring themselves strictly within the rule of court which enables them to give their notice of trial at the time of delivering their replication; here their notice was not delivered until some days afterwards.

*Coleridge, J.* The rule must be discharged. I think the plaintiffs were perfectly regular in their notice of trial; for although it is said by the terms of the rule of court that the notice of trial may be given at the time of the delivery of the replication, the object is, that when the formal pleadings are at an end, the plaintiff may give his notice of trial without delay, and it can make no difference in principle whether he gives his notice at the same time as his replication or afterwards.

Rule discharged with costs.

#### Court of Review.

*Re Pyne.* May 5, 1847.

#### REMOVAL OF FIAT.—AFFIDAVIT.

*The affidavit for removal of a fiat from one commissioner to another, ought to state that such removal will be for the benefit of the creditors generally.*

*Mr. Cole* applied to remove the fiat from Bath to London, upon an affidavit stating that six-sevenths of the creditors resided at Luton, near London, and had expressed their wish to have the removal.

The *Chief Judge* said, he would make the order as prayed, upon the production of an affidavit stating that the removal of the fiat would not only be for the benefit of the majority of the creditors, but for the benefit of the creditors generally.

#### CHANCERY SITTINGS.

##### Master of the Rolls.

AT WESTMINSTER.

Saturday . . . May 22	Motions.
Monday . . . 24	Petitions in the General Paper.
Tuesday . . . 25	Pleas, Demurrers, Causes, Fur. Directions and Exceptions.
Wednesday . . . 26	
Thursday . . . 27	Motions.
Friday . . . 28	
Saturday . . . 29	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Monday . . . 31	
Tuesday . . . June 1	
Wednesday . . . 2	
Thursday . . . 3	Motions.
Friday . . . 4	
Saturday . . . 5	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Monday . . . 7	
Tuesday . . . 8	
Wednesday . . . 9	
Thursday . . . 10	
Friday . . . 11	Petitions in the General Paper.
Saturday . . . 12	Motions.

Short Causes, Consent Causes, and Consent Petitions every Saturday at the sitting of the court.

NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

#### PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

THE Royal Assent has been given to the Inclosure of Commons Bill. The Bills relating to Gifts for Pious Purposes, and as to Agricultural Tenants' Right, have been postponed. The Taxation of Costs on Private Bills requires attention.

#### THE EDITOR'S LETTER BOX.

THE large space devoted this week to the new Association of Metropolitan and Provincial Solicitors has rendered it necessary to postpone several letters.

The suggestion of P. R. A. shall be followed up.

The queries of A Subscriber, at Haverfordwest, shall be inserted.



# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, MAY 22, 1847.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

### THE LORD CHANCELLOR'S BANKRUPTCY LAW AMENDMENT BILL.

WE lost no time in laying before our readers a brief sketch of this measure shortly after its appearance in print, and a recent number contained a summary of the contents of each clause, copied from the marginal abstract, (*ante*, p. 20.) In one respect, the present measure undoubtedly begins at the right end. It repeals no less than sixteen statutes, so far as they relate to matters in bankruptcy, commencing with the 6 Geo. 4, c. 16, and concluding with the 9 & 10 Vict. c. 28.

There might be some reason to complain, that no attempt appears to have been made to abridge the clauses copied from the repealed acts which it is now proposed to re-enact, but, if we understand rightly, the bill presented by the Lord Chancellor is not put forward as a digested, complete, measure which parliament is invited to pass in its present shape, but merely as an example of the manner in which the multitudinous enactments now in force may be reduced into something like system and order, and some obvious improvements engrafted thereon. Ample time, we presume, will be allowed for the consideration of the subject, and further amendments introduced as the bill assumes a more perfect form, and the suggestions which the manner of its introduction invites are severally entertained, and either adopted or rejected, as may be deemed expedient.

Regarding the Lord Chancellor's bill in this light, any critical examination of its provisions would be premature and scarcely justifiable. We propose, therefore, in the

present instance, to do little more than direct attention to the more important amendments which the bill suggests, merely observing, that if no greater or more extensive changes in the Law of Bankruptcy and its administration are contemplated than those suggested by this bill, the measure can scarcely be expected to silence the complaints, or satisfy the just expectations, of the public. The Law of Bankruptcy is objectionable in many respects, but the total absence of system which prevails in its administration has tended, more than any defects in the law itself, to render it inoperative and odious.

Amongst the most striking changes which the new bill proposes in the existing law, we may notice, in the first place, the amendment suggested with respect to a trader debtor's summons as the foundation for a compulsory act of bankruptcy. Our readers will remember that the summons issued to a trader debtor, under the 5 & 6 Vict. c. 122, calls upon the debtor either to admit the demand of the creditor, or depose that he believes he has a good defence to such demand;<sup>a</sup> and if the debtor is minded, upon any ground real or fanciful, to swear he *believes* he has a good defence, there is an end of the matter, the whole proceeding is inoperative, and according to the practice adopted by the Commissioners of Bankruptcy, the summons is discharged with costs to be paid by the creditor.<sup>b</sup> The provision, which leaves it altogether to the conscience of the debtor to determine his own belief as to the existence of a good defence, renders the proceeding in many

<sup>a</sup> See vol. 31, p. 541.

<sup>b</sup> *In re Feare*, Leg. Obs. vol. 31, p. 466.



cases a mere mockery. To remedy this, it is now proposed to enact,<sup>c</sup> that the trader, upon appearance to the summons, and refusal to admit the creditor's demand, may be required to satisfy the court that he has a good defence to such demand, and in case he shall fail to satisfy the court, the court may proceed as in cases where the trader debtor neither admits nor denies the demand. When the trader debtor admits the demand, or fails to satisfy the court that he has a good defence, the court may require him to render an immediate account in writing of his stock in trade and other goods, and to enter into a bond with sureties for duly carrying on his trade, and accounting for all property under his control, at the end of fourteen days. If the trader debtor does not render the account required, or enter into such bond, the court may issue a warrant, empowering the person to whom it is addressed to enter the debtor's place of business and take charge of his goods, and to continue in such charge for such period as the court may appoint in that behalf. These provisions will certainly introduce an important alteration in the law, and may afford effective security against the fraudulent disposition of property by dishonest traders; but the clauses in which these provisions are embodied will require mature consideration, for as at present framed, although the intention is manifest, the machinery for giving it effect is obviously defective and inadequate.

The Lord Chancellor's bill, after reciting the various acts of bankruptcy created by former statutes, enacts, that a trader not paying, securing, or compounding for a judgment debt upon which the plaintiff might sue out execution, or disobeying the order of any court of equity, or any order in bankruptcy or lunacy, for payment of money on a peremptory day fixed, after fourteen days' notice, shall be deemed to have committed an act of bankruptcy.

A novel, and somewhat questionable, authority is proposed to be vested in the Lord Chancellor, by the 183rd section of the printed bill. If the petitioning creditor's debt turns out not to be really due, or there is any failure in the proof that the person against whom the fiat in bankruptcy issued, committed an act of bankruptcy, and was a trader at the time of the issuing of the fiat, and it shall also appear that such fiat was taken out fraudulently or

maliciously, the Lord Chancellor, upon petition of the person against whom the fiat was taken out, may order satisfaction to be made to him for the damages sustained. We know not if it be intended by this provision to supersede the right of action for maliciously suing out a fiat in bankruptcy, but we cannot help thinking that, considering the multitude and importance of the Lord Chancellor's duties, the assessment of damages in such a case might be advantageously left to a jury, and greatly doubt if such a question could be satisfactorily determined upon affidavits. The clause, in our humble judgment, might be judiciously omitted.

A summary power is given to arrest the person, and also to seize the books, goods, &c., of any person against whom a fiat issues, when it is proved to the satisfaction of the court that there is reasonable ground for believing that such person is about to quit England, or to remove or conceal any of his goods or chattels;<sup>d</sup> but the party so arrested may apply for his discharge forthwith, unless the petitioning creditor can show good cause for his detention. Instances occasionally occur in which the absence of any authority of this description affords an opportunity for the perpetration of the grossest frauds upon creditors. This clause, therefore, appears to be well deserving of attention.

The 193rd section contains a provision which does not seem to be necessary, and is in some measure unintelligible. It is in these terms:—

“That if the assignees commence any action or suit, for any money due to the bankrupt's estate, before the time allowed by this act for the bankrupt to dispute the fiat shall have elapsed, any defendant in any such action or suit shall be entitled, after notice given to the said assignees, to pay the same or any part thereof into the court in which such action or suit is brought, and all proceedings with respect to the money so paid into court shall thereupon be stayed, until the time aforesaid shall have elapsed, and if within that time the bankrupt shall not have commenced such action, suit, or other proceeding as aforesaid, and prosecuted the same with due diligence, the money shall be paid out of court to the official assignee, and that out of such money such court may order such sum, if any, as such court thinks fit to be paid to such defendant for his costs and expenses, but otherwise shall abide the event of such action, suit, or other proceeding as aforesaid, and upon such event shall be paid out of court, either to the official

<sup>c</sup> See sections 151 to 156, inclusive.

<sup>d</sup> Section 188, page 71, of printed bill.

assignee, or to the person adjudged bankrupt, as the court shall direct, and that after such payment so made into court, it shall not be lawful for the person so adjudged bankrupt to proceed against the defendant for recovery of the same money."

We incline to think that there is some omission, possibly a typographical error, in the latter part of the clause. In its present shape it is difficult even to guess at what is meant to be enacted.

The intention of the following clause is sufficiently intelligible, but we question whether it is expressed with sufficient clearness and certainty to enable the court to give it practical effect. It enacts—

"That if any bankrupt, being at the time insolvent, shall (except upon the marriage of his children, or for some valuable consideration) have conveyed, assigned, or transferred to any of his children, or any other person, any hereditaments, offices, fees, annuities, leases, or goods, or have delivered or made over to any such person, any bills, bonds, notes, or other securities, or have transferred his debts to any other person, or into any other person's name, the court shall have power to order the same to be sold and disposed of as aforesaid, and every such sale shall be valid against the bankrupt and such children and persons as aforesaid, and against all persons claiming under him."

If it be proposed that the Court of Bankruptcy shall have power summarily to determine whether any assignment, transfer, or gift, made by a person who afterwards becomes bankrupt, is void as against creditors, this should be specifically declared, and suppose the property or securities to be in the hands of the assignee or donee, some mode should be pointed out by which the assignees of the bankrupt may obtain possession before proceeding to a sale. If the bankrupt's assignee is compelled, in the first instance, to try the holder's title by an action of trover, this section will be in a great measure nugatory.

The bill, towards its close, contains a series of clauses, indicating the course of procedure to be adopted when a trader dies and no legal personal representative is constituted within one month. In such case, upon petition, and after notice left at the last place of business or residence of the deceased trader, a fiat may issue, under which the messenger will be empowered by warrant to take charge of the goods of the deceased trader; and if a legal personal representative be not constituted within two months, the official assignee may take out administration and proceed as

under a fiat issued in the trader's life. These provisions appear to afford a satisfactory remedy in cases in which the existing law is avowedly defective.

We shall only add, that as the new bill proposes greatly to extend the authority exercised by the commissioners in bankruptcy, and to invest them with an enlarged discretion, it is of the utmost importance that the court should be placed on a different footing, and powers so formidable subjected to an effective control.

The bill now under consideration, it will be observed, is wholly irrespective of the law relating to insolvents; but we understand the Lord Chancellor is about to introduce a separate measure on that subject, and that when this has been done, the Bankruptcy Bill, the Insolvency Bill, and the bill introduced by Lord Brougham, are all three to be referred to a select committee of the house of Lords.

#### REMEDY FOR THE RECOVERY OF SMALL TENEMENTS.—COUNTY COURTS ACT.

THE doubt we ventured to express,<sup>e</sup> as to the courts holding that the Small Debts Act, repeals the statute 1 & 2 Vict. c. 74, under which justices in petty sessions are empowered to issue warrants of possession in regard to tenements not exceeding 20*l.* in value, has occasioned several communications from country correspondents, by whom the question, as might be supposed, is deemed of considerable importance.

Since the subject was last noticed in this publication, our attention has been directed to a case laid before Sir *Frederick Thesiger*, with that learned gentleman's opinion, which in the result is confirmatory of the view already suggested. The opinion is in these terms:—

"There is nothing in the 9 & 10 Vict. c. 95. which repeals the 1 & 2 Vict. c. 74; on the contrary, it appears to me that there is that in it which is almost equivalent to an exception.

"The plaint is to be of personal actions, which of course does not include the recovery of possession of premises; but in the 58th section, there is an express exception of actions of ejectment. Now, the summary remedy given by the 1 & 2 Vict. c. 74, is a lieu of the proceedings by ejectment; and therefore it appears to me, both negatively and positively, that the jurisdiction of the justices under that act is not taken away.

FREDERICK THESIGER.

"*Temple, 13th April, 1847.*"

<sup>e</sup> See *ante*, p. 17.

Agreeing in the main with Sir *Frederick Thesiger's* construction of the Small Debts Act, we must frankly state, that it does not seem to be deserving of all the weight to which it would fairly be entitled, if it clearly appeared, that the learned gentleman's attention had been expressly directed to the 6th and 122nd sections of the 9 & 10 Vict. c. 95. The difficulty, as we have already had occasion to observe, arises chiefly upon the construction to be put upon the 6th section, which enacts:—

“That any act of parliament heretofore passed, so far as the same respectively relate to or effect the jurisdiction and practice of the courts so established, or give jurisdiction to any court or to any commissioner of bankruptcy, with respect to judgments or orders obtained in the courts so established, shall be repealed.”

Now it is impossible, as we submit, to contend, that the jurisdiction conferred on the judges of the county courts with regard to small tenements under the 122nd section, is not affected by the act 1 & 2 Vict. c. 74, but the 6th section, according to our reading, does not go so far as to repeal all acts affecting the jurisdiction of the New County Courts, but only such acts as relate to or affect the jurisdiction of the County Courts, “with respect to judgments or orders obtained in” those courts. If this construction of the stat. 9 & 10 Vict. c. 95, be correct, there is no reason why the justices in petty sessions, under the 1 & 2 Vict. c. 74, and the judges of the County Courts under the 9 & 10 Vict. c. 95, should not exercise a concurrent jurisdiction as regards tenements of a value not exceeding 20*l.* When the value of the tenement is above 20*l.* and not exceeding 50*l.*, the justices have no jurisdiction, and the County Court judges have an exclusive jurisdiction. By giving this limited operation to the repealing clause, much difficulty will be avoided.

## CONSTRUCTION OF STATUTES.

PROMISSORY NOTE PAYABLE TO THE MAKER'S OWN ORDER, HELD TO BE INVALID.

A DECISION of the Court of Exchequer has lately been reported,<sup>f</sup> which, if it should be followed by the other courts, will do more to affect the negociability of promissory notes than any case which has

occurred since the days of Lord Chief Justice Holt. That eminent judge held, that a promissory note had no intrinsic validity and that it only operated as evidence of a debt between the immediate parties to it.<sup>g</sup> Before his time, however, promissory notes were found to be extremely convenient instruments for the purposes of internal trade, and the mercantile community were so much startled by the decisions of the courts restraining their operation, that an application was made to the legislature, and the statute 3 & 4 Anne, c. 9, passed, which, after reciting the great advantages that would be derived by putting promissory notes on a footing with bills of exchange, and referring to the decisions of the courts already alluded to, proceeded to enact:—

“That all notes in writing that shall be made and signed by any person, bodies, &c., whereby such person or body shall promise to pay to any other person or body, or their order, or bearer, a sum mentioned in such note, shall be construed to be by virtue thereof payable to such person or body to whom the same is made payable; and such note payable to any person or body shall be assignable over as inland bills of exchange, according to the custom of merchants; and the person or body to whom such sum by such note is payable may maintain an action for the same against the person who signed the same, as in cases of inland bills; and any person or body to whom such note is assigned by indorsement thereon may maintain his action against the party who signed the same, or against any indorser thereof, as in cases of inland bills.”

There can be little doubt that it was the intention of the framers of this clause to put promissory notes on the same footing in all respects as bills of exchange. The case first referred to, apart from other questions, raises a doubt whether the act completely effectuates the object of its framers.

*Flight v. Maclean* was an action by an indorsee against the maker of a promissory note for 500*l.*; and the declaration, in describing the note, alleged that the defendant thereby promised to pay to the order of defendant, 500*l.*, two months after date, and that the defendant then indorsed the same to the plaintiff. To this declaration there was a demurrer, on the ground that a note payable to a man's own order was not a legal instrument, and could not be negotiated.

In support of the demurrer it was contended, that it was essential to the validity

<sup>f</sup> *Flight v. Maclean*, 16 Law J. 23 Exch.

<sup>g</sup> See *Clarke v. Martin*, 2 Lord Raym. 757; S. C. 1 Salk. 129; *Buller v. Cripps*, 6 Mod. 29.

of the instrument that it should show in whose favour it was made, and as no other person was mentioned in the note as payee but the maker, there was no contract at all, and the instrument was void.<sup>b</sup>

The *Court*, (consisting of Barons *Alderson*, *Rolfe*, and *Platt*,) determined in favour of the demurrer, on the ground that the instrument was not a promissory note within the statute of Anne, which required such an instrument to be made payable by the party making it to some other person, or the order of some other person, or to bearer. Judgment was therefore given on this count of the declaration for the defendant.

Upon the authority of this case, rules have subsequently been granted in other courts, involving a similar question, and when these rules come to be decided, the point, no doubt, will be definitively settled. Considering the quantity of paper circulating throughout the country, under the same circumstances as the note in question, it is of the utmost importance that the attention of the public and the profession should be directed to the subject. Whatever may be the true construction of the statute, it is certain that promissory notes payable to the maker's own order have for some time been commonly used, and the observations of text writers,<sup>i</sup> in reference to notes of this description, have not tended to excite any suspicions as to their validity.

#### INCORPORATED LAW SOCIETY.— METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

MANY of the objects stated in the address of this association being comprehended within the plan of the Incorporated Law Society, some of our subscribers have inquired whether there has been any difference of opinion amongst the members of the profession, many of whom belong to both associations, and why it is that the Incorporated Society should not undertake all the measures proposed by the Metropolitan and Provincial Society?

The most satisfactory answer to these inquiries will be found in the statement made by the Council of the Incorporated Law Society, at the annual general meeting

held on the 18th instant. The following is the substance of that statement :—

"The council, in the latter part of last year, soon after the passing of the Small Debts Act, were requested to co-operate with the Provincial Law Societies in adopting measures for the improvement of the profession, and the furtherance of its interests, by establishing a New Association composed of Provincial as well as Metropolitan Solicitors. In reference to this proposition, it may be proper to remind the members that the Incorporated Law Society was instituted under a deed of settlement, in 1827, and obtained a charter in 1831 ; that it commenced by establishing an extensive law library, and founding courses of lectures on all the great branches of law and practice ; that, in 1836, the judges of the superior courts delegated to the governing body of the society the important duty of examining all persons applying to be admitted on the roll of attorneys,—a test of fitness which prevailed in early times, but had long fallen into disuse. This duty, thus confided to the society, appears to have been well and faithfully discharged, for in 1843, a few years afterwards, this mode of examination was made permanent by act of parliament, and the society was appointed Registrar of attorneys and solicitors. Shortly after this period, a new charter was obtained, and the members at large generously surrendered their individual rights of property for the benefit of the corporate body.

"Considering the position of this society, it is no matter of surprise, therefore, that the respectable and influential law societies throughout the country should look to this chartered institution for its assistance in supporting the just claims of the attorneys and solicitors, and its co-operation in any measures for the further improvement of that branch of the profession.

"The council were consequently invited to lend their aid in forwarding the objects of the proposed association. But although the objects of that association appeared to accord with many of the purposes for which this society was founded, yet as they proposed to extend their aims to others, which however valuable in themselves, were not contemplated by the charter, the council felt themselves compelled to decline the proposal.

"The council, moreover, entertained the opinion, that by holding a course strictly confined within the range of their chartered powers, they might be able more effectually to promote the interests of the association, and through them of the profession. The council are gratified in knowing that this view of their duty and the decision to which it led, have met with the approbation of members of the profession distinguished for their experience and sound judgment.

"In the meantime the Metropolitan and Provincial Law Association has been prosperously established, and so far as this society can usefully and properly afford its co-operation, the council will be always ready to assist their brethren in carrying out their important objects."

<sup>b</sup> The principal cases cited were, *De la Chamette v. The Bank of England*, 9 Barn. & Cres. 208 ; *Smith v. Kendall*, 6 Term R. 123.

<sup>i</sup> See *Chitty on Bills*, 9th ed. 516 ; *Byles on Bills*, 3rd ed. p. 44.

## NOTICES OF NEW BOOKS.

*The Law of Railways and Railway Companies.* By WILLIAM HODGES, Esq., Barrister-at-Law. Sweet, London, 1847.

THIS is the last, and appears to us the best, publication on the highly important subject of which it treats. Without in the slightest degree detracting from the merits of its numerous predecessors, we have no hesitation in expressing our strong approbation of the pains successfully bestowed upon this work. It appears to us equally practical, elaborate, convenient, accurate, and complete; and as such, calculated to be very valuable to practitioners, either before committees of parliament, or courts of law or equity, and in the courts of assessors, and before justices, in compensation cases. The numerous "forms relating to compensation cases" are very carefully drawn and will be found extremely useful; and one of them is worthy of special notice on account of its importance, and its securing an advantage to complainants of compensation, of which they are often not aware. Our readers are aware, that under the Lands' Clauses Consolidation Act, (stat. 8 Vict. c. 18, s. 38,) the promoters of a railway are to give notice before summoning a jury, of "the sum of money which they are ready to give for the interest of the owners; in lands sought to be purchased, and for damage to be sustained by him by the execution of the works;" and under s. 49, the jury are to find their verdict separately for the sum due in respect of the *purchase* of the land, and for the compensation for the damage sustained by severing such land from other land of the owner, or otherwise injuriously affecting such *land*;" and it is under this section that notices and warrants are usually drawn, even when the bulk of the claim is in respect of compensation for damage done independently and irrespective of the *land*; viz., for injury to or destruction of a *business* carried on upon the premises, by some person other than the owner. Under the above clause, it is very difficult to say how the jury could entertain the claim: but under the Railway Clause Consolidation Act, (stat. 8 Vict. c. 20, s. 6,) there is no question on the subject. That section is far more extensive than the other, and sufficiently extensive in its terms to comprehend any kind of damage sustained by any person by reason of the execution of the act. Mr. Hodges has, therefore, (pp. 298,

301), given forms in accordance with this latter section. We are not aware of any other work in which this point has been hit; and in this and many other respects we are glad to give a hearty commendation to the very elaborate and systematic work before us.

## NEW BILLS IN PARLIAMENT.

## TAXATION OF PARLIAMENTARY COSTS.

WE submit to our readers the Bill for establishing a Taxation of Costs on Private Bills.

It follows many of the provisions in the Attorneys and Solicitors' Act, 6 & 7 Vict. c. 73, but the taxing officer to be appointed under the 3rd section should be an attorney or solicitor of 12 years standing, as are the taxing masters in Chancery.

It recites the 6 Geo. 4, c. 123, and proposes to amend it, and make more effectual provision for taxing the costs and expenses charged by parliamentary agents, attorneys, solicitors, and others, in respect of bills subject to the payment of fees in parliament, commonly called *private bills*, and incurred in complying with the *standing orders of the House of Commons relative to such bills*, and in preparing, bringing in, and carrying the same through, or in opposing the same in the House of Commons.

1. Repeal of 6 Geo. 4, c. 123.

2. That from and after the passing of this act, no parliamentary agent, attorney, or solicitor, nor any executor, administrator, or assignee of any parliamentary agent, attorney, or solicitor, shall commence or maintain any action or suit for the recovery of any costs, charges, or expenses in respect of any proceedings in the House of Commons relating to any petition for a private bill, or private bill, or in respect of complying with the standing orders of the said house relative thereto, or in preparing, bringing in, and carrying the same through, or opposing the same in, the House of Commons, until the expiration of one month after such parliamentary agent, attorney, or solicitor, or executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, has delivered unto the party to be charged therewith, or sent by post to, or left for him at, his counting-house, office of business, dwelling-house, or last known place of abode, a bill of such costs, charges, and expenses; and which bill shall either be subscribed with the proper hand of such parliamentary agent, attorney, or solicitor, (or in the case of a partnership, by any of the partners, either with his own name or with the name of such partnership,) or of the executor, administrator, or assignee of such parliamentary agent,

attorney, or solicitor, or be inclosed in or accompanied by a letter subscribed in like manner referring to such bill: Provided always, That it shall not in any case be necessary, in the first instance, for such parliamentary agent, attorney, or solicitor, or the executor, administrator or assignee of such parliamentary agent, attorney, or solicitor, in proving a compliance with this act, to prove the contents of the bill delivered, sent, or left by him; but it shall be sufficient to prove that a bill of costs and expenses subscribed in manner aforesaid, or enclosed in or accompanied by such letter as aforesaid, was delivered, sent, or left in manner aforesaid; but nevertheless, it shall be competent for the other party to show that the bill so delivered, sent, or left was not such a bill as constituted a *bond fide* compliance with this act: Provided also, That it shall be lawful for any judge of the superior courts of law or equity in England or Ireland, or of the court of session in Scotland, to authorize a parliamentary agent, attorney, or solicitor to commence an action or suit for the recovery of his costs, charges, and expenses against the party chargeable therewith, although one month has not expired from the delivery of a bill as aforesaid, on proof, to the satisfaction of the said judge, that there is probable cause for believing that such party is about to quit that part of the United Kingdom in which such judge hath jurisdiction.

3. That for the due execution of the several provisions of this act, the Speaker of the House of Commons shall, by warrant under his hand, appoint one or more officers, who shall tax all bills of costs, charges, and expenses which by virtue of this act shall be required to be taxed by him or them: and in case more than one such officer shall be so appointed, such officers may act either jointly or separately in reference to any such taxation, as they shall think fit.

4. That for the purpose of any such taxation, the said taxing officer so to be appointed as aforesaid may examine upon oath any party to such taxation, and any witness who may be examined in relation thereto, and may receive affidavits, sworn before him or before any Master or Master Extraordinary of the High Court of Chancery, relative to such costs, charges, or expenses; and any person who on such examination on oath, or in any such affidavit, shall wilfully or corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

5. That the said taxing officer shall be empowered to call for the production of any books or writings in the hands of any party to such taxation, relating to the matters of such taxation, and to take an account of what is due by or from either party in respect of such costs, charges, and expenses, and for that purpose to take an account of all monies paid to or received by or on account of either of such parties, which in his judgment ought to be added to, or set off against, the amount of such costs, charges, and expenses: Provided always, That nothing herein contained shall be con-

strued to authorize such taxing officer to determine the amount of fees which may have been payable to the House of Commons in respect of the proceedings upon any private bill.

6. That it shall be lawful for the said taxing officer to demand and receive for any such taxation such fees as the House of Commons may from time to time by any standing order authorize and direct; and to charge the said fees, and also to award costs of such taxation, against either party to such taxation, or in such proportion against each party as he may think fit; and he shall pay and apply the fees so received by him in such manner as shall be directed by any such standing order as aforesaid.

7. That the Speaker may from time to time prepare a list of such charges as it shall appear to him that parliamentary agents, attorneys, solicitors, and others may justly make with reference to the several matters comprised in such list; and the several charges therein specified shall be the utmost charges thenceforth to be allowed upon any such taxation in respect of the several matters therein specified.

8. That if any person upon whom any demand shall be made by any parliamentary agent, attorney, or solicitor, or executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, for any costs, charges, or expenses in respect of any proceedings in the House of Commons relating to any petition for a private bill, or private bill, or in respect of complying with the standing orders of the said house relative thereto, or in preparing, bringing in, or carrying the same through, or in opposing the same in, the House of Commons, or if any parliamentary agent, attorney, or solicitor, or executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person who shall be aggrieved by the non-payment of any costs, charges, and expenses incurred or charged by him in respect of any such proceedings as aforesaid, shall make application to the said taxing officer at his office, for the taxation of such costs, charges, and expenses, the said taxing officer, on receiving a true copy of the bill of such costs, charges, and expenses which shall have been duly delivered as aforesaid to the party charged therewith, shall in due course proceed to tax and settle the same, and shall certify the amount thereof; and upon every such taxation, if either the parliamentary agent, attorney, or solicitor, or executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person by whom such demand shall be made as aforesaid, or the party charged with such bill of costs, charges, and expenses, having due notice, shall refuse or neglect to attend such taxation, the said taxing officer may proceed to tax and settle such bill and demand *ex parte*; and if, pending such taxation, any action or other proceeding shall be commenced for the recovery of such bill of costs, charges, and expenses, the court or judge before whom the same shall be brought shall stay all proceedings thereon, until the amount of such bill

shall have been duly certified by the Speaker as hereinafter provided.

9. That the said taxing officer shall, if required by either party, report his taxation to the Speaker, and in such report shall state the amount which he finds to be due to either party from the other party in respect of such costs, charges, and expenses, and any payments so to be accounted for as aforesaid, and including the amount of costs and fees payable in respect of such taxation as aforesaid; and the said Speaker shall, upon application made to him, deliver to the party concerned therein, and requiring the same, a certificate of the amount so found due, which certificate shall be binding and conclusive on the parties as to the matters comprised in such taxation, and as to the amount due thereon, in all proceedings at law or in equity or otherwise; and in any action or other proceeding brought for the recovery of the amount so certified to be due, such certificate shall have the effect of a warrant of attorney to confess judgment; and the court in which such action shall be commenced, or any judge thereof, shall, on production of such certificate, order judgment to be entered up for the sum specified in such certificate, in like manner as if the defendant in any such action had signed a warrant to confess judgment in such action to that amount: Provided always, That if such defendant shall have pleaded that he is not chargeable with such costs, charges and expenses, such certificate shall be conclusive only as to the amount thereof which shall be payable by such defendant in case the plaintiff shall in such action recover the same.

10. That, whenever any petition for a private bill, or private bill, shall be promoted or opposed as aforesaid in the House of Commons by any municipal or ecclesiastical corporation, or by the trustees of any property held in trust for public or charitable purposes, or by any other public body having no private or personal pecuniary profit or advantage in promoting or opposing such petition or bill, all the costs, charges and expenses incurred in promoting or opposing the same, shall be taxed, before the same shall be lawfully payable and recoverable; and no auditor or other officer or person who shall audit the accounts of any such corporation, trustees or other public body shall allow any of such costs, charges and expenses unless the same shall have been taxed and the amount thereof duly certified.

11. That within six months after each session of parliament, unless application shall have previously been made for the taxation of such costs, charges and expenses as aforesaid, all parliamentary agents, attorneys and solicitors who shall have been engaged in promoting or opposing any petition for a private bill, or private bill or proceeding, prior to or during such session, on behalf of such corporation or trustees or public body as aforesaid, shall deposit with the said taxing officer, at his office, a copy of their respective bills of costs, charges and expenses in respect of the same; and such bills shall be taxed according to such rules and re-

gulations as the Speaker shall from time to time make, and according to the list of charges (if any) which shall have been prepared by the Speaker as aforesaid; and the said taxing officer shall certify the amount of such costs, charges and expenses which shall appear to him to be fairly due or payable, and which every auditor or other officer or person who shall audit the accounts of such corporation, trustees or public bodies as aforesaid, may allow to be paid: Provided always, That the Speaker may from time to time, on application being made and sufficient cause shown to him, enlarge the time for depositing such bills of costs as he shall think fit.

12. That if *five or more shareholders of any joint-stock company*, or any shareholder or shareholders of any joint-stock company *holding not less than one-tenth part in value of the shares in the capital thereof*, shall make a demand in writing upon the directors or secretary thereof, requiring that the costs, charges and expenses in any manner incurred by such company in promoting or opposing any such petition, private bill, or proceeding, shall be taxed, such directors or secretary shall make application to the said taxing officer for the taxation thereof, and such costs, charges and expenses shall not be lawfully payable or recoverable, and no auditor, officer or other person who shall audit the accounts of such company shall allow the same, unless the same shall have been taxed, and the amount thereof duly certified by the Speaker or by the said taxing officer in such manner as the Speaker shall appoint; and the term "*Joint-stock Company*" shall be construed to include all companies which shall be subject to the provisions of an act of the eighth year of her present Majesty, intituled, "*An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies*," or which shall have been incorporated by statute or charter, or which shall have been authorised by statute or letters patent to sue and be sued in the name of some officer or person.

13. That any parliamentary agent, attorney, or solicitor who shall neglect or refuse to deposit his bill of costs, charges, and expenses as hereinbefore required, and any auditor, officer, or other person who shall allow any such costs, charges, and expenses, the same not having been taxed, and the amount thereof duly certified as required by this act, shall be liable to forfeit and pay a penalty not exceeding 50*l*.

14. Meaning of certain words in this act.

15. Short form of citing the act.

16. Amendment of act.

#### GRIEVANCE OF ASSESSORS OF SMALL DEBT COURTS.

WE lately inserted a letter (see p. 557, *ante*) from a solicitor who was an Assessor of one of the Small Debt Courts, complaining of his removal from office to make room for a judge selected from the bar. A similar grievance has



been sustained by Mr. George Drew, of Bermondsey, attorney and solicitor. Mr. Drew has petitioned the House of Commons, setting forth—

“That in the year 1825 he was appointed one of the chief clerks of the Southwark Court of Requests, with a salary of 500*l.* per annum.

“That he continued to fill such office until the year 1845, when the 7 & 8 Vict. c. 96, was passed, abolishing imprisonment for debts under 20*l.*, by the operation of which act, the business of the court became so diminished that the fees were insufficient to pay the full amount of the petitioner’s salary, and he became entitled, under the provisions of that act, to a yearly compensation for the deficiency thereof, and which he has since received from the treasury.

“That the last-mentioned act empowered the commissioners of courts of requests to appoint an assessor.

“That the commissioners of the Southwark court of requests having delayed appointing an assessor in consequence of their having memorialised the privy council to extend their jurisdiction, complaints were made that the suitors of the court were sustaining injury by such delay, and thereupon a special meeting of the commissioners was held, at which it was unanimously resolved that the petitioner should be requested to accept the appointment of assessor; and the petitioner having acceded to such request, a memorial, signed by nearly one hundred of the commissioners (being all but six of the whole number who had qualified) was presented to Sir Geo. Grey, Baronet, one of her Majesty’s principal Secretaries of State, and its prayer was supported by the members for the borough of Southwark and for the eastern division of the county, and also by the members for Greenwich and other places, and her Majesty’s said Secretary of State having been pleased to confirm such appointment, your petitioner thereupon resigned not only his said office of clerk (which he was entitled to hold for life,) but also his practice as an attorney at law.

“That in the month of August, 1846, a bill was pending in parliament for the better recovery of small debts, in which provision was made that persons holding the appointment of assessors should be the first judges of the new courts, but such bill was afterwards altered, and the clause confirming the assessors as the first judges of the new courts was omitted.

“That the petitioner, notwithstanding the omission of this clause, was induced to believe that the claims of the judges of the existing courts to appointments under the bill, when it passed into law, would, if they were properly qualified, be considered as superior to all others; and he was confirmed in that belief by finding that although attorneys in general were not qualified to be appointed judges of the new courts, yet provision was made for the appointment of such attorneys who might have been appointed to preside in any court held under certain acts, whereof the Southwark

court of requests was one, and such attorneys, so appointed, were required to give up their practice within twelve calendar months.

“That the petitioner, since his appointment as assessor of the court, has sat twice a-week from 10 o’clock in the morning until 4 o’clock in the afternoon, and has determined many hundreds of cases brought before him, as part of the ordinary business of the court, as well as executed the provisions of the act respecting fraudulent debtors, by which a considerable sum of money has been obtained for creditors which would otherwise have been lost.

“That the petitioner is informed that since his appointment as such assessor, and until Christmas last (when it became known that the act of the last session would be put into operation at an early period), the business of the court had considerably increased; so much so as to make it probable that no further claim would be made for the deficiencies in the salaries of the chief clerk and high bailiff, whereby a saving to the government would be effected of more than 800*l.* per annum.

“That the petitioner has reason to believe, and has been repeatedly assured that the care exercised by the petitioner in deciding the various cases brought before him as the assessor, and in carrying out the provisions of the act respecting fraudulent debtors, had given great satisfaction to the commissioners and suitors.

“That the petitioner being informed that arrangements were in contemplation for forming the districts of the new courts, made a representation to the Lord High Chancellor of his appointment as assessor, and of his having relinquished his practice of an attorney-at-law, and soliciting his lordship to appoint him to be the judge of the court over which he was then presiding as assessor, but your petitioner received no reply, but afterwards learned that Mr. Clive, the police magistrate of the Hammersmith and Wandsworth court, had been appointed the new judge by a letter from that gentleman stating such his appointment.

“That the petitioner immediately thereupon addressed a letter to the Lord High Chancellor, praying that as his lordship had appointed a judge for the Southwark district, he would be pleased to appoint the petitioner to some other district, but your petitioner has received no reply to this application.

“That the commissioners, accompanied by a deputation from the district, and by the members for the borough of Southwark, presented a memorial to the Right Honourable the Lord Chancellor in favour of the petitioner, and the petitioner believes that such deputation at the same time presented a memorial to the Lord High Chancellor from nearly all the attorneys practising in the borough of Southwark, stating that the appointment of the petitioner as the assessor of the court had given great satisfaction, and that they trusted the petitioner would have been appointed the judge under the new act.

“That, relying implicitly upon the arrangement proposed in the Small Debts Bill when



first brought into your honourable house, the petitioner resigned his office of clerk, to which he had been appointed for life, and to which was attached a salary of 500*l.* a-year, and subsequently gave up his practice as attorney at law and solicitor, and that the petitioner having for a period of twenty-two years acted as a public officer in the Southwark court of requests, without any complaint against his conduct, he feels that his non-appointment to the office of judge will operate very injuriously to his character and future prospects in his profession.

## FEES IN COURTS OF LAW AND EQUITY.

THE committee nominated on this inquiry are, Mr. Watson, Sir James Graham, Mr. Attorney-General, Mr. Solicitor-General, Sir Frederick Thesiger, Mr. Stuart Wortley, Mr. Romilly, Mr. Walpole, Mr. Bickham Escott, Mr. Roebuck, Mr. Parker, Mr. Hume, Sir John Hanmer, and Mr. Ewart. The committee are empowered to send for persons, papers, and records; and five members are to be a quorum.

## UNQUALIFIED PRACTITIONERS IN THE NEW COUNTY COURTS.

AMONGST other instances of complaint against the practice and course of proceeding in the New County Courts, we are informed that at *Sheffield*, Mr. Walker, the judge of that district, at the instance of the mayor and other inhabitants, has intimated an opinion in favour of allowing collectors of debts to appear in support of claims sought to be recovered before him.

In the Court Baron the attorneys were entitled to practise, but on the passing of the Court of Requests Act, which altered the constitution of the old court, the attorneys were excluded. The suitors not finding it convenient to attend personally, and being deprived of professional assistance, were driven to employ collectors and accountants, and sometimes sold their debts to them. Thus sprung up this class of persons assuming to practise in the local court.

But this can form no good ground for sanctioning in the New County Court the dangerous precedent of admitting any but attorneys to appear and plead. We trust that the learned judge will, on reflection, deem it right to adopt the practice in this respect of the other County Courts, and hear only duly qualified attorneys. It is manifestly the intention of the legislature that barristers and attorneys only should

be heard, and we are quite sure that if unqualified persons are, on any pretence, permitted, the utility of the court and the interests of the public will essentially suffer.

If the judge should come to an unfavourable determination, it will then be the duty of the attorneys to make an appeal to the proper quarter, and we cannot doubt of their ultimate success.

## ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

### Courts of Equity.

### LAW OF PROPERTY AND CONVEYANCING.

[FOR the sake, as well of useful classification, as convenient sub-division, the decisions relating to the Law of Property and Conveyancing, are here separated from the other cases recently reported in 2 Phill. part 1; 8 Beav. parts 2 & 3; 14 Sim. part 3; 2 Coll., part 3; 5 Hare, part 1; and 33 L. O.]

### BIDDINGS AT SALES.

See *Sale; and Vendor and Purchaser*, 4.

### DEED.

*Construction.—Limitation to executors and administrators, for their own use and benefit.*—Under a limitation by deed of a fund, to “the executors or administrators of the settlor, to and for his and their own use and benefit.” *Held*, under the circumstances, that the fund belonged to the next of kin, and not to the administrator.

*A. B.* being under an obligation to make a settlement on his wife, by deed expressed to be made in order to make such provision, conveyed property to trustees in trust to permit him and his assigns to receive the dividends, “to and for his and their own entire use and benefit during the joint lives of himself and his wife;” and in case *A. B.* survived his wife, then in trust, after her death, to assign it to him, “his executors, administrators, and assigns, to and for his and their own use and benefit;” but if his wife should survive him, then to her for life, and afterwards to assign it “unto the executors or administrators of *A. B.* to and for his and their own use and benefit.” The wife survived. *Held*, that, subject to her life interest, the fund belonged to the next of kin of *A. B.*, and not to his administrator. *Meryon v. Collett*, 8 Beav. 386.

### DEPOSIT OF TITLE DEEDS.

*Extent of lien.—Interest.*—A deposit of title deeds *prima facie* creates an equitable mortgage upon the whole property comprised in them. A debtor deposited his title deeds with a creditor until such time as his account should not exceed 100*l.*, at which time they were to be

restored to him. The debtor died indebted to the creditor in 274l. : *Held*, that the creditor's lien extended to the whole 274l.

*Quere*, whether the deposit of title deeds, without a legal security, will make a debt bear interest which does not in its nature bear interest. *Ashton v. Dalton*, 2 Coll. 565.

#### DOWER.

1. *Mortgage*.—A party died in 1830, having vested in him a mortgage in fee, and the lapse of time and circumstances were such as to render it very improbable that any party could now establish the equity of redemption. *Held*, nevertheless, that the widow was not entitled to dower. *Flack v. Longmate*, 8 Beav. 420.

2. *Arrears*.—*Groundless defence*.—Bill for dower. The defendants in possession denied the title of the widow, alleging that the husband had not been seised of an estate of inheritance in the premises; that allegation on information as to the time of his death, which was believed to be correct, but afterwards found to be erroneous. Decree for dower and arrears for six years before the filing of the bill, but without costs.

*Semble*, if the defence to a bill for dower be groundless, or founded on facts which the defendant knew, or with reasonable diligence might have known, to be true, the decree would be with costs. *Bamford v. Bamford*, 5 Hare, 203.

#### EXECUTORS.

See *Deed*.

#### INTEREST.

On a sale under the court, in June, 1839, it was provided by the conditions, that the abstract should be delivered in 21 days, that the purchaser should be entitled to the rents from October, and pay his purchase money in November, and if, "from any cause whatever," it should not be paid at that time, he should pay

her jointure 800l., to be charged upon the same hereditaments. The settlor, not having made any settlement in pursuance of the covenant, by his will, confirming the settlement, devised his estates in the counties of Oxford and Berkshire to his wife for life. He afterwards, by deed, revoked his will as to the estates in Oxfordshire, which consequently descended to his heir at law. The jointress insisted that she was entitled to the Berkshire estate for life, free from any contribution towards her jointure; and that the Oxfordshire estates were exclusively liable to satisfy the covenant. But it was held, that, as no intention to benefit the jointress to the extent for which she contended appeared on the face of the will, the two estates were liable to contribute rateably to the satisfaction of the covenant. *Eyre v. Green*, 2 Coll. 527.

Case cited in the judgment: *Grigby v. Powell*, 5 Sim. 290; 3 C. & F. 103.

#### JURISDICTION.

See *Specific Performance*.

#### MARRIED WOMAN.

*Acknowledgment of deed*.—*Jurisdiction*.—

The court will not compel a married woman to execute and acknowledge, pursuant to the Fines and Recoveries Act, a deed of conveyance of property in which she has a beneficial interest. *Jorden v. Jones*, 33 L. O. 254.

#### MORTGAGE.

1. *Redemption*.—A bill to redeem mortgage, filed before the mortgage has become absolute at law, is demurrable, notwithstanding the mortgagor may have tendered to the mortgagee the purchase money, together with interest up to the day named in the proviso for redemption. *Brown v. Cole*, 14 Sim. 427.

2. *Sale*.—Bill by mortgagor against mortgagee and his solicitors, praying to have a sale

not having been made out, but without costs, on the ground that they were substantial movers and authors of the sale, which, as between the mortgagor and mortgagee, was proved not to be sustainable in a court of equity. *Matthie v. Edwards*, 2 Coll., 465.

3. *Power of sale*.—A mortgagee having power of sale cannot, as between him and the mortgagor, exercise it in a manner merely arbitrary, but is, as between them, bound to act in a prudent and business-like manner, with a view to obtain as large a price as may fairly and reasonably, with due diligence and attention be under the circumstances obtainable. Therefore, where a man who had a reversionary interest in a sum of money expectant on the death of his wife without issue by him, died in his wife's lifetime after having mortgaged that interest, and a few weeks after his decease the mortgagee, under a power of sale, advertised the property for sale as a reversion expectant on the death of a widow lady "now aged 30 or thereabouts," and made no offer to satisfy the

there was great delay and difficulty on their part in making out their title, which was not complete till 1845. The purchaser had entered into possession. On a motion made in 1845, to pay the purchase-money and interest into court, the court held, that it could not relieve the purchaser from payment of interest, but made the order without prejudice to any application for compensation. *Greenwood v. Churchill*, 8 Beav. 413.

And see *Deposit of Title Deeds*.

#### LIEN.

See *Deposit of Title Deeds*.

#### JOINTURE.

*Devise of Lands charged with jointure*.—*Contribution in satisfaction of covenant*.—The owner of estates in the counties of Oxford and Berks covenanted on his marriage to convey such part of them to trustees as should be of the annual value of 900l., to the use of himself for life, with remainder to the use and intent that his intended wife should yearly receive for

purchaser that there was a possibility of the widow having issue, it was held, that the sale, under such circumstances, was improvident, and could not be sustained as against persons claiming under the mortgagor. *Matthie v. Edwards*, 2 Coll. 465.

4. *Principal and surety.—Injunction.*—S., in consideration of a loan of 10,000*l.* from G., assigned to the latter two mortgages which he held upon an estate belonging to N., and executed another mortgage of an estate of his own by way of further security. Afterwards, on N.'s mortgage debts becoming due, S. brought an action against him on the covenants in his mortgage deeds, which G. filed a bill to restrain. On a motion before the Lord Chancellor to discharge an injunction which had been granted by the Vice-Chancellor: *Held*, that it ought not to have been granted, except upon the terms of the plaintiff reconveying S.'s mortgage, and releasing him from his mortgage debt, and the plaintiff now declining these terms, and S. undertaking that the sum to be recovered in the action should be paid to the plaintiff, the injunction was dissolved. *Gurney v. Seppings*, 2 Phill. 40.

See *Dower ; Mortgage*, 2.

#### POWER OF APPOINTMENT.

1. Power by deed or will to appoint to "nephew and nieces, grand-nephews and nieces," in such shares, and subject to *such trusts*, &c. as A. should appoint: *Held*, not to authorize an appointment by will to a grand-niece for life, with remainder to her children. *Waring v. Lee*, 8 Beav. 247.

Cases cited in the judgment: *Hussey v. Dillon*, Ambler, 603; *James v. Smith*, 6th July, 1844.

2. *Trust.*—A residue was bequeathed in trust for A. for life, and after his death, for his children, as he should appoint; and in default of appointment, for the children equally, with remainder over. Before A. was married or had exercised the power, some of the parties entitled in remainder, filed a bill to have the accounts of the testator's estate taken, and the residue ascertained and secured. Before decree, A. married and had a child; and four days after the child was born, he exercised the power; and then filed a bill against the plaintiff in the former suit, stating his marriage, the birth of his child, and the appointment, and insisting, that thereby the interests of the plaintiffs in the former suit, had been wholly determined and put an end to. The plaintiffs, however, contended, that the appointment was fraudulent and void *in toto*, inasmuch as, though it was made in favour of A.'s children, he would, in the probable event of their dying, become entitled to the property as their next of kin. But the court held, that under existing circumstances, the appointment was good, and therefore, that no decree ought to be made in the original suit, until the happening of the events which would entitle A. to the property. *Butcher v. Jackson*, 14 Sim. 444.

Case cited in the judgment: *Macqueen v. Farquhar*, 13 Ves. 467, 479.

And see *Settlement*.

#### REDEMPTION.

See *Mortgage*, 1.

#### PROBATE, DIOCESAN.

See *Vendor and Purchaser*, 2.

#### SALE.

1. *Opening biddings.*—A purchaser under the court died before the confirmation of the report: *Held*, that it was not necessary to serve his heirs with notice of an application to open the biddings. *Templer v. Sweet*, 8 Beav. 464.

2. *Opening biddings.*—The court declined to open biddings upon an advance under 10*l.* per cent. *Holroyd v. Wyatt*, 2 Coll. 537.

See *Mortgage*, 2, 3; *Trust*, 3; *Conditions of Sale*, 1.

#### SETTLEMENT.

*Power of appointment.—Trustee and cestui que trust.*—In a marriage settlement the property of the wife was conveyed and assigned in trust for the wife for life for her separate use, remainder to the husband for his life, remainder to the children of the marriage, and in default of issue of the marriage, to the brother of the wife and his children. After the marriage the husband and wife filed their bill, charging that the brother, who was one of the trustees of the settlement, in concert with the solicitor's clerk, who took instructions for, and attended the execution of the settlement, had fraudulently omitted or erased from the deed a general power of appointment by the wife, in default of issue of the marriage, and praying that the settlement might be rectified by inserting such a power. The wife did not prove the instructions for the insertion of such a power, nor the fraud in omitting or erasing it, but it appeared by the evidence that the power had been introduced in the draft settlement prepared by counsel, and also in the engrossment; and the answer of the brother stated, that the power having been noticed by him when the engrossment was read over to him, he objected to it, as not being according to his understanding of the intentions of the wife, when the solicitor's clerk admitted it was not, and struck it out. The court held, that it was the duty of the brother, as one of the trustees, not to have permitted the power to be struck out without the express directions of the intended wife on that point; and that relief might be given in the suit, subject to the question whether the wife knew, when she executed the settlement, that it did not contain the power. *Harbridge v. Wogan*, 5 Hare, 258.

See *Trust*, 1; *Voluntary Settlement*.

#### SPECIFIC PERFORMANCE.

1. *Injunction.—Jurisdiction.*—The jurisdiction of the court to restrain by injunction an act which the defendant is by contract bound to abstain from, is not confined to cases in which there are either no other executory terms in the contract, or none which a court of equity has not the means of enforcing.

If a bill states a right or title in the plaintiff to the benefit of a negative agreement on the

part of the defendant, or of his abstaining from a given act, the court will equally interfere by injunction, whether the right be at law or under an agreement which cannot be otherwise brought under its jurisdiction. *Dietrichsen v. Cabburn*, 2 Phill. 52; *Hills v. Croll*, 2 Phill. 60.

Cases cited in the judgment: *Kimberley v. Jennings*, 6 Sim. 340; *Yovatt v. Winyard*, 1 J. & W. 394; *Green v. Folgham*, 1 Sim. & St. 398; *Cholmondeley v. Clinton*, 19 Ves. 261; *Rankin v. Huskisson*, 4 Sim. 13; *Squire v. Campbell*, 1 My. & Cr. 459; *Martin v. Nutekin*, 2 P. W. 266; *Barrett v. Blagrove*, 5 Ves. 355; 6 Ves. 104; *Morris v. Colman*, 18 Ves. 437; *Clarke v. Price*, 2 Wils. 157.

2. *Misdescription.*—*Timber estate.*—*Compensation.*—Bill by the vendor for the specific performance of a contract to purchase a timber estate, where the particulars of sale described it as comprising a certain wood "with upwards of 65 acres of fine oak timber trees, the average size of which approached 50 feet," and in the particulars of the lot described it only as "65 acres, 2 roods, and 12 perches of growing timber." It appeared, on the evidence for the plaintiff, that the average size of the trees was about 35 feet, but on that for the defendant, that it was only about 22 feet; and the defendant, moreover, alleged that it was sold at a time when he had no means of seeing the wood, and that he relied on the particulars of sale: *Held*, that as the representation on the particulars of sale had proved to be incorrect, and as it was not shown that the defendant knew it to be incorrect at the time of making the contract, the court would not, at all events, enforce the specific performance of the contract without compensation; and that (inasmuch as the particulars of sale did not express what number of trees, or quantity of timber the wood contained,) it was not a case in which the court could measure the extent of the deficiency, or ascertain the amount of compensation; and that the bill must therefore be dismissed. *Lord Brooke v. Rounthwaite*, 5 Hare, 298.

Cases cited in the judgment: *Trover v. Newcome*, 3 Mer. 704; *Stewart v. Alliston*, 1 Mer. 26; *Fenton v. Browne*, 14 Ves. 144.

See *Vendor and Purchaser*, 3.

#### TENANTS IN COMMON.

*Occupation-rent.*—*Equitable set-off.*—A freehold house was devised to several tenants in common, some of whom afterwards resided in it, but not under any agreement to pay rent, nor to the exclusion of the others. *Held*, that no rent accrued in respect of such occupation; and consequently, that the Master could not take the same into account for the purpose of establishing an equitable set-off against a legacy claimed by any one of such occupants from the executors of one of the deceased tenants in common. *M'Mahon v. Burchell*, 33 L. O. 234; S. C. 5 Hare, 322; 2 Phill. 127.

#### TITLE.

1. *Reference.*—*Reference of title*, upon

motion by the plaintiff (the vendor) after answer, notwithstanding the question in dispute in the cause might have been conveniently determined by the courts, without a reference. *Curling v. Flight*, 5 Hare, 248.

2. Whether the question in a cause be, what evidence of title the vendor is bound to give, or whether he is able to give sufficient evidence, the question is equally one of title, and the proper subject of a reference. *Curling v. Flight*, 5 Hare, 248.

See *Deposit of Title Deeds*.

#### TRUST.

1. *Investment in leaseholds.*—*Settlement.*—Trustees were "authorised and empowered," with the "consent and direction" of the tenant for life, to lay out the trust monies on "leasehold hereditaments," "in some convenient place." *Held*, that it was imperative on the trustees, on the requisition of the tenant for life, to invest in leaseholds, and that they could not refuse to do so on the ground of the liabilities to be incurred by them on the covenants, they having expressly contracted on the subject; but that they had a discretion to exercise as to value, title, and locality; 2ndly, that leasehold houses were within the power. *Beauclerk v. Ashburnham*, 8 Beav. 322.

2. *Equitable mortgages.*—*Priorities.*—*Legal estate.*—Four trustees sell out stock, under an agreement that the proceeds shall be lent to two of them, upon equitable mortgage, by deposit of the documents of title of a copyhold estate which belonged to such two trustees in undivided moieties. The money was lent, and the documents deposited; but afterwards, by some unexplained means, they came into the hands of one of the two trustees who had borrowed the fund, and that trustee made a second equitable mortgage on his own moiety of the estate, by depositing the documents with a third person, who took them without notice of the first mortgage; that trustee afterwards became bankrupt, and the second equitable mortgagee purchased and obtained from the assignees of the bankrupt a surrender, and was admitted tenant of the bankrupt's undivided moiety, having, at the time of such purchase of the legal estate, received constructive notice of the first mortgage.

In a suit by one of the trustees, (the lender of the trust fund, the other having become bankrupt,) for foreclosure, *Held*, that the second equitable mortgagee, who had taken the legal estate with notice of the obligations of the mortgagor to third parties, could only hold that estate subject to such obligations, notwithstanding that he had originally taken his mortgage security without notice.

That, in the absence of any suggestion of a specific case, as against the plaintiff, charging him with acts whereby the mortgagor was enabled to commit the fraud, the mere fact of the possession of the title deeds by the mortgagor was not sufficient to postpone the claim of the first mortgagee.

That the fact of the loan of the proceeds of

the stock having been a breach of trust, did not affect the question as between the first and second mortgagees.

That the *cestui que trusts* of the stock, not having been parties to or adopted the mortgage, were not necessary parties to the suit for foreclosure. *Allen v. Knight*, 5 Hare, 272.

Cases cited in the judgment: *Saunders v. Dehew* 2 Vern. 271; *Evans v. Bicknell*, 6 Ves. 173.

3. *Sale.—Jurisdiction.—Advowson.*—A testator devised his advowson to trustees, to sell on the death of A., and divide the produce amongst certain persons. A. was the incumbent, so that on his death no sale could be made until the vacancy was filled up. *Held*, that the court had no jurisdiction to authorise a sale in the lifetime of A., on the ground that it would be beneficial to the parties. *Johnstone v. Baber*, 8 Beav. 233.

#### VENDOR AND PURCHASER.

1. *Conditions of sale.*—Vendors having put forth ambiguous conditions of sale: *Held*, to be bound strictly by those conditions.

Time held to be of the essence of the contract between vendor and purchaser, partly by reason of the nature of the trade carried on upon the property offered for sale, and partly upon the construction of the conditions of sale. *Seaton v. Mapp*, 2 Coll. 556.

2. *Personal representation.—Diocesan probate.*—An agreement having been entered into for the sale of certain securities upon tolls within the diocese of Lincoln, it appeared from the abstract of title, that the will of one in the series of owners, through whom the property passed to the vendor, had been proved only in the consistory court of the Bishop of Lincoln. Upon a bill filed by the purchaser against vendor, the court declined, either to force the title on the purchaser or to order the vendor to procure probate in the prerogative court of the Archbishop of Canterbury. *Williams v. Bland*, 2 Coll. 575.

3. *Delay.—Laches.—Specific performance.*—Where there has been great delay and little hope of perfecting the title within a reasonable time, the court will dismiss a purchaser with costs.

In 1842, the defendant contracted to purchase an estate. A suit for specific performance having, in the same year, been instituted by the vendors, it appeared, that the vendors claimed under a testator who died in 1809, and subject to his debts: that a creditor's suit had been instituted in 1813, and a decree for an account and sale made in 1817, since which time nothing effectual had been done in the suit, and no report of debts had been actually confirmed. After so great delay, no further time was given to the vendors to complete their title, and the bill for specific performance was dismissed with costs. *Fraser v. Wood*, 8 Beav. 329.

Case cited in the judgment: *Sidebotham v. Barrington*, 3 Beav. 524; 4 Beav. 110; 5 Beav. 261.

4. *Bidding, retracting.*—An estate sold under

a decree was knocked down to the solicitor of a mortgagee, who was not a party to the suit, but consented to the sale. A motion by the solicitor, to be discharged from his purchase, on the ground that he retracted his bidding before the hammer fell, was refused with costs. *Freer v. Rimmer*, 14 Sim. 391.

See *Specific Performance*.

5. *Payment into court.—accepting title.*—A purchaser applying to pay money into court must undertake to accept title, although the payment is consented to by all the parties. *Dennings v. Henderson*, 33 L. O. 354.

6. *Payment of purchase money.—Income tax.*—Upon motion for payment of purchase money, with interest, into court, a deduction on account of the income tax was not allowed to be made part of the order. *Holroyd v. Wyatt*, 33 L. O. 550.

#### VOLUNTARY SETTLEMENT.

1. In the case of an imperfect voluntary deed, neither the assignor nor the executor can be compelled to permit the assignee to use his name for the recovery of the debt.

*Held*, that neither a voluntary assignment by deed of a mortgage debt, accompanied by a grant, not specifying the particular estate, but of all estates held in mortgage, and by a covenant for further assurance, and without delivery of the mortgage deed, or notice to the mortgagor, nor the voluntary assignment of a policy of assurance retained in the hands of the assignor, and without notice given to the grantor, though accompanied by a covenant for further assurance, can be considered as a complete and effectual assignment, to be acted upon and enforced by the assignee, without any further or other act to be done by the assignor. *Ward v. Audland*, 8 Beav. 201.

Cases cited in the judgment: *Fortescue v. Barnett*, 3 Myl. & K. 36; *Edwards v. Jones*, 1 Myl. & Cr. 226.

2. A trustee under a voluntary settlement of chattels, policy of assurance, and mortgage, filed a bill against the representatives of the settlor for the recovery thereof. *Held*, that if the property were legally vested in the plaintiff, he might recover it at law and apply it on the trusts; but if otherwise, then as the deed was voluntary, the court could afford the plaintiff no assistance in recovering it. *Ward v. Audland*, 8 Beav. 201.

See *Power of Appointment; Settlement*.

#### WARD.

The court will direct a settlement on the application of the mother of an infant ward, who has married without a settlement being executed, although the mother may have consented to the marriage and an assignment may have been made by the ward and her husband after the marriage to a third party. *Russell v. Nicholls*, 33 L. O. 18.

# RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

## Lord Chancellor.

*Myers v. Weatherall.* March 26th, 1847.

APPEAL.—MOTION IN RESPECT OF COSTS ONLY.

*The court will not rehear a motion in respect only of costs, if it be necessary to investigate the facts of the case for the purpose of ascertaining the propriety of the decision in respect of the costs.*

Mr. Elderton said, that this was a motion to discharge an order of Vice-Chancellor Wigram, ordering the plaintiff to pay the costs of an application to his Honour under the following circumstances. After a notice to dismiss the bill had been given by the defendant, an order of course to amend was obtained at the Rolls by the plaintiff, and the costs tendered. When the motion to dismiss was brought on, the Vice-Chancellor required to be informed of what had been done under the order to amend, and it was then contended that such order had been irregularly obtained; but if so, the application to discharge it ought to have been made at the Rolls. His Honour made no order on the motion further than directing the payment of the costs by the plaintiff.

The Lord Chancellor. This is rehearing the motion for costs only. The rule is, that if it is necessary to look into the facts of the case to ascertain whether the costs were properly ordered, such a rehearing cannot be had; if it be manifest on the face of the order that the costs were improperly ordered, it is otherwise. It is necessary in this case to look into the affidavits to get at the facts, therefore it comes within the first-mentioned principle, and this motion must be refused, with costs.

## Rolls Court.

*Re Taylor.* April 22, 1847.

FOUR-DAY ORDER.—DELIVERY OF PAPERS.

*The court requires the four-day order for the delivery of papers, to be preceded by an order limiting some longer period for their delivery.*

In this case Mr. Rogers moved for an order upon a solicitor to deliver up his papers within four days, or in default for his committal. Two orders for the delivery of the papers had been previously obtained and served; but neither of them limited any time, within which the delivery was to be made.

Lord Langdale said, that the four-day order ought to be preceded by an order fixing some longer period for the delivery of the papers, and made an order for their delivery within a week, in default of compliance with which, the four-day order could be obtained.

## Vice-Chancellor of England.

*Lovell v. Andrew.* May 3, 1847.

PARTIES.—CONSTRUCTION OF 39TH ORDER OF AUGUST, 1841.

*On a cause coming on for argument under the 39th Order of August, 1841, the defendant is strictly confined to the objection which he has raised in his answer for want of parties.*

THE plaintiff in this case filed a bill for an account on behalf of himself and other shareholders, against the directors of a railway. The defendant by his answer raised an objection that a certain class of shareholders ought to be parties. The plaintiff set down the cause for argument on that objection, under the 39th Order of August, 1841. On the cause coming on for argument, the defendant proceeded to raise *ore tenus*, other objections for want of parties generally, besides that stated in his answer. To this the plaintiff objected.

Mr. Bethell and Mr. Terrell for the defendant, contended, that although the 39th Order in terms said, that the cause was to be argued on that objection only on which it was set down; yet clearly it did not mean to prevent a defendant at the hearing from urging other objections connected with it.

Mr. J. Parker and Mr. Bilton, contra, contended, that if this were allowed a defendant might raise a most trivial objection by his answer, and then on the hearing argue most important questions, which the plaintiff would then hear for the first time and be unprepared to combat; besides, if the defendant had originally stated in his answer the important questions which he afterwards raised *ore tenus*, the plaintiff, without setting the cause down to be argued, might have amended his bill, and they cited *Hunter v. Macklew*, 5 Hare, 238.

The Vice-Chancellor, after looking at the case cited said, that it was directly in point, and that he felt himself bound by it. V. C. Wigram there seemed to think, that he was not bound to attend to the objections raised *ore tenus* at the hearing, and that he should so decide with him in the present case.

Objection allowed.

## Vice-Chancellor Knight Bruce.

*Bull v. Falkner.* Feb. 19 and 22, 1847.

PRACTICE.—PRO CONFESSO.—CONTEMPT.

*A defendant having appeared, and being in contempt for want of answer on being brought to the bar of the court, pleaded poverty, when it was referred to the Master to inquire as to her poverty: the master certified that she had made default in proving her poverty, and the court on application of the plaintiff granted a habeas corpus cum cauis to bring her to the bar, and ordered that the proper officer should attend at the return of the writ with the record, in order that the bill might be taken pro confesso.*

Mary Rebecca Falkner, one of the defendants in this case having appeared, was in contempt for want of answer. On being brought to the bar by *habeas corpus*, she stated, that she was unable to put in her answer through poverty, having made oath in court to that effect, she was turned over from the sheriff of Middlesex to the Queen's prison, and a reference was directed to the Master to inquire and certify to the court respecting her alleged poverty. A warrant was taken out to consider the order, at the return of which the plaintiff's and defendant's solicitors attended, and the latter was ordered to bring in a proper state of facts within a week. More than a week having elapsed without the state of facts being brought in, a warrant was taken out calling upon the defendant to show cause why the Master should not report default, but the defendant's solicitor now appearing at the return of the last-mentioned warrant, and more than three months having elapsed since the order of reference, the Master, at the request of the plaintiff's solicitor, certified that the defendant was in default.

C. M. Roupell for the plaintiff applied, that upon the Master's certificate for a *habeas corpus cum causis* to bring the defendant to the bar of the court to answer her contempt, and for an order that the proper officer should attend at the return of the writ with the record, that the same might be taken *pro confesso* against the defendant, he stated that a similar order had been made by the Vice-Chancellor of England in *Venables v. Brandon*.

His Honour made the order without requiring notice to be served on the defendant.

Feb. 27.—The defendant being brought to the bar of the court, it was ordered, with the consent of the plaintiff, that a traversing note should be forthwith filed by the plaintiffs, that the defendant should be at liberty to put in an answer within a limited time, and that the defendant should be discharged, the costs of the contempt to be costs in the cause.

### Queen's Bench.

(Before the Four Judges.)

*Spence v. Chadwick.* Easter Term, 1847.

PLEADING.—CONTRACT.—EXCEPTION.

A. delivered goods to B. to be conveyed from Gibraltar to London, the act of God and the dangers of navigation excepted. The vessel was to touch at Cadiz on the passage. While the vessel was at Cadiz the goods belonging to the plaintiff were seized as contraband, and forfeited according to the revenue laws of Spain.

Held, in an action by A. for the non-delivery of the goods, that a plea setting out the above facts was bad as not amounting to a defence to the action.

This was an action by the freighter against the shipowner to recover the value of certain goods. The contract on the part of the defendant, as appeared from the bill of lading,

was to convey the goods, the acts of God and the dangers of navigation excepted, from Gibraltar to London, in a vessel which was to stop at Cadiz on the voyage. The breach was the non-delivery of the goods. To a declaration setting out the above facts, the defendant pleaded, amongst other pleas, that on the arrival of the vessel at Cadiz, the goods in question were seized by the custom-house officers of that town, and afterwards confiscated as contraband by a court there of competent jurisdiction. To this plea there was a demurrer on the ground that it did not form any defence to the action.

Mr. Crompton in support of the demurrer. This is an absolute contract on the part of the defendant to deliver the goods in London, the acts of God and the dangers of navigation excepted. The defendant in his plea does not bring himself within either of these exceptions, and nothing short of illegality will excuse him from the performance of his contract. The courts of this country do not take notice of the revenue laws of any other country, and it is not any excuse to say that it became impossible to perform the contract. *Gosling v. Higgins*,<sup>a</sup> *Blight v. Page*,<sup>b</sup> *Barker v. Hodgson*,<sup>c</sup> *Sjoerds v. Lascombe*,<sup>d</sup> *Holman v. Johnson*.<sup>e</sup>

Mr. Boville, contra, contended, first, that the circumstances set out in the plea brought the defendant within the exception named in the bill of lading, because the loss was occasioned by inevitable accident, and not through any neglect or default of the defendant. He also contended that there was an implied warranty that the goods shipped were lawful and proper for the voyage; and that the defendant was exonerated, because the plaintiff consented that the vessel should go to Cadiz, where the goods in question were condemned by a court of competent jurisdiction, which judgment the courts in this country will recognise. He cited *Story on Bailments*, sec. 488; *Abbott on Shipping*, 326; *Fletcher v. Inglis*;<sup>f</sup> *Gabay v. Lloyd*;<sup>g</sup> *Hill v. Idle*;<sup>h</sup> *Magalhaens v. Busher*;<sup>i</sup> *Power v. Whitmore*;<sup>j</sup> *Philips v. Hunter*;<sup>k</sup> *Hadley v. Clarke*.<sup>l</sup>

Mr. Crompton was heard in reply.

Lord Denman, C. J. The defendant enters into a positive contract to convey the goods of the plaintiff from Gibraltar to London, and the only exception named in the bill of lading is the act of God or the dangers of navigation. The defendant, in excuse for not performing his contract, says, that the vessel having put into the port of Cadiz, as agreed upon between the parties, that the goods were there condemned according to the revenue laws of Spain. The plea does not show that there was anything illegal in the contract, that it was in violation of the law of nations as between England and

<sup>a</sup> 1 Camp. 451. <sup>b</sup> 3 Bos. & Pul. 295, note.

<sup>c</sup> 3 M. & S. 267.

<sup>d</sup> 16 East, 201.

<sup>e</sup> Cowp. 341.

<sup>f</sup> 2 Barn. & Ald. 315

<sup>g</sup> 3 Barn. & Cress. 793.

<sup>h</sup> 4 Camp. 327.

<sup>i</sup> Id. 54. <sup>j</sup> 4 M. & S. 141. <sup>k</sup> 2 H. Bl. 402.

<sup>l</sup> 8 Term R. 259.



Spain, or that there was anything criminal in the nature of the transaction. The defendant must be taken to have entered into a contract the nature of which he fully contemplated, and the law of Spain was equally unknown to both parties. The plea, therefore is insufficient, the rule of law, which has not only been acted on for centuries, but is founded on good and sound reason, being, as stated by Lord Ellenborough in *Atkinson v. Ritchie*,<sup>m</sup> that when the party by his own contract creates a duty or charge on himself, he is bound to make it good, if he may, notwithstanding any accident by inevitable necessity, because he might have provided against it by his contract.

*Patteson, J.* The defendant clearly does not come within the exception contained in the bill of lading. The loss has not arisen from any act of God or the dangers of navigation. Then it is said, the defendant has been prevented from completing his contract because the goods were confiscated by a court of competent jurisdiction in Spain, but it is not shown that there was any default on the part of the plaintiff, or that he knew the goods were contraband. The plaintiff did not request that the vessel should touch at Cadiz, that was a mere description of the route. Neither party, therefore, were acquainted with the law of Spain, and the seizure did not arise from the default of either plaintiff or defendant, and the case falls within the principle laid down in the case of *Atkinson v. Ritchie*.

*Wightman and Erle, J.'s*, concurred.

Judgment for the plaintiff.

### Queen's Bench Practice Court.

*Doe dem. Farmery v. Roe.* May

EJECTMENT.—AFFIDAVIT.

*On an application for judgment against the casual ejector where proceedings have been taken under 4 Geo. 4, c. 28, it does not render the affidavit irregular to state, that a year's rent is due, if the affidavit also allege that there is no sufficient distress on the premises to satisfy half a year's rent.*

*J. Browne* moved for judgment against the casual ejector, the proceedings being taken under 4 Geo. 2, c. 28, to recover possession of certain premises for the nonpayment of rent, there being no sufficient distress on the premises to countervail the arrears of rent.

The affidavit used in this case was regular in all respects, except that it stated that one year's rent was in arrear, and the Master objected to draw up the rule on the ground that the case came within the authority of *Doe dem. Powell v. Roe*, 9 Dowl. 548. It was now contended that the objection taken in that case did not apply in the present case, for here the affidavit states that there is no sufficient distress to be found on the premises to countervail half a year's rent, which is all the statute requires.

The principle on which *Doe dem. Powell* was

decided was, that there might be sufficient on the premises to countervail a half year's rent, although there was not to satisfy a year's rent, and there the affidavit stated that there was no sufficient distress to satisfy the arrears of rent; in the present case the affidavit is so framed that the objection taken in *Doe v. Powell* does not arise.

*Coleridge, J.* I think you are within the words of the act, and do not see that any mischief can arise, therefore you may take your rule.

Rule absolute.

### Common Pleas.

*Fearne v. Cockrane.* Easter Term, 1847.

PLEADING.—SATISFACTION AND DISCHARGE.—DEMURRER FOR DUPLICITY.

*Where to a count on a bill of exchange the defendant pleaded the delivery and acceptance by the plaintiff of his, the defendant's, own promissory note, payable on demand, for and on account of such bill of exchange and the causes of action in respect thereof, and then further alleged that the plaintiff afterwards agreed to accept and did accept the warrant of attorney to confess judgment of a third party, in full discharge and satisfaction of the said promissory note, and of all causes of action in respect thereof, and of the causes of action in the said count on the bill of exchange mentioned. Held, that the plea only set up one defence by way of satisfaction and discharge, and was not bad for duplicity.*

ASSUMPSIT by the drawer against the acceptor on three bills of exchange. Plea, that after the making and acceptance of the bill in the first count mentioned, and after the same became due and payable according to the tenor and effect thereof, and before the commencement of the suit, to wit, on, &c., the defendant made his promissory note in writing, bearing date, &c., and thereby promised to pay to the plaintiff or order, on demand, 1,050*l.*, and then delivered the same to the plaintiff, who then took and received the same for and on account of the last-mentioned bill of exchange and the causes of action in respect thereof in the said first count mentioned; and that thereon and afterwards and after the making and delivering of the said promissory note in the plea mentioned and before the commencement of the suit, to wit, on, &c., it was agreed by and between the plaintiff and defendant and Thomas Earl of Dundonald, that the said Earl should sign and seal, and as his act and deed deliver to the plaintiff in full discharge and satisfaction of the said promissory note in this plea mentioned, and of all causes of action in respect thereof, and of the cause of action in the said first count mentioned, a certain deed or instrument called a warrant of attorney to confess judgment, bearing date, &c., in the form, &c., thereafter mentioned: and that the plaintiff should accept and receive the same of and



from the said Earl in such full discharge and satisfaction as last aforesaid. The plea then alleged the subsequent execution of the warrant of attorney in full satisfaction and discharge of the said promissory note in the plea mentioned, and of all causes of action in the said first count mentioned; and that the plaintiff accepted and received the said warrant of attorney in such full satisfaction and discharge of the said promissory note in that plea mentioned, and of all causes of action in respect thereof, and of the cause of action in the said first count mentioned. To this plea there was a demurrer on the ground of duplicity. Joinder in demurrer.

T. Jones in support of the demurrer. The plea is double, inasmuch as either the promissory note therein mentioned or the warrant of attorney would of itself have been a good defence. *Kearslake v. Morgan*, 5 T. R. 513, and *Mercer v. Cheese*, 4 M. & Gr. 804, are authorities to show that the giving and acceptance of a bill or note was a sufficient answer *prima facie*, and if so, then the subsequent allegation of the delivery and acceptance of a warrant of attorney was clearly another and sufficient defence.

Channell, Sergeant, (*Bevan* with him). The note here was the note of the debtor himself, payable on demand, and was not therefore even a suspension of the cause of action as was the case in *Kearslake v. Morgan*, where the note given appears to have been that of a third party. Then in *Mercer v. Cheese*, the court only expressed a passing opinion, upon which the plaintiff elected to amend; besides there the bill pleaded was made payable on a future day. The case too of *Price v. Price*, 16 Law J., N. S., Exch. 99, seems to be at variance with the opinion expressed in *Mercer v. Cheese*, and to be an authority in support of the present plea. The note here being payable on demand, is not even a suspension of the plaintiff's claim; it is in fact stated in the plea merely as matter of inducement, and therefore cannot make the plea double. Steph. on Pl. 5th ed. 296.

Jones was heard in reply, and cited in addition the case of *Maillard v. Duke of Argyle*, 6 M. & G. 40.

Wilde, C. J. It appears from the plea that the promissory note was given for and on account of the debt, payable on demand, and therefore in point of law it was of no greater effect than the original liability between the parties. It appears also on the face of the pleadings that the note remained in the hands of the plaintiff, for the plea alleges that the warrant of attorney was given in satisfaction of it, which would not be the case if it had been outstanding in the hands of another. The only mode therefore by which satisfaction is shown is by the warrant of attorney, alleged in the plea to have been given in satisfaction of the note and also of the cause of action in the first count mentioned. The note at the highest appears to be in the nature of a collateral security, and the warrant of attorney was a satisfaction of the cause of action and the collateral se-

curity; the plea therefore shows, not two, but only one mode of satisfaction. It is not necessary to examine with any minuteness whether the case of *Price v. Price* did or did not break in upon *Kearslake v. Morgan*, but such certainly appears not to have been the intention of the Court of Exchequer. That case, however, is not consistent with the case of *Mercer v. Cheese*, but then the latter case appears not to have been a decision of this court on the point, the counsel having thought it better to amend. Without going further into the question of whether or not the cases of *Price v. Price* and *Kearslake v. Morgan* may not stand together, it is sufficient to say that in this case there is no duplicity.

Coltman, J., concurred.

Cresswell, J. All that the plea alleges with respect to the note falls short of showing any satisfaction of the cause of action, and that being so, it would have been bad on general demurrer. It was necessary, therefore, to go further, and accordingly, by the allegation as to the giving of the warrant of attorney, only one defence is set up, and although it is alleged that the latter was given in satisfaction of the note, which is only a collateral security as well as the present cause of action, yet the plea is not on that account bad.

Williams, J. The present is one of that class of cases where a negotiable instrument given may amount to a *quasi* satisfaction, and the plea is not made bad for duplicity by its going on, as here, to allege that which turns the *quasi* satisfaction into an actual one. Whether the plea is argumentative or not it is not necessary to say, as that question is not raised by the demurrer.

Judgment for the defendant.

## CHANCERY SITTINGS.

Lord Chancellor.

AT WESTMINSTER.

Trinity Term, 1847.

Saturday	May 22	{ Appeal Motions and Appeals.
Monday	24	{ (Petition-day) Cause, Lunatic and Bankrupt Petitions.
Tuesday	25	{ Appeals.
Wednesday	26	{ Appeals.
Thursday	27	{ Appeal Motions and Appeals.
Friday	28	{ Appeals.
Saturday	29	{ Appeals.
Monday	31	{ Appeals.
Tuesday	June 1	{ Appeals.
Wednesday	2	{ Appeals.
Thursday	3	{ Appeal Motions and Appeals.
Friday	4	{ (Petition-day.) Unopposed Petitions, and Appeals.
Saturday	5	{ Appeals.
Monday	7	{ Appeals.
Tuesday	8	{ Appeals.
Wednesday	9	{ Appeals.
Thursday	10	{ Appeals.
Friday	11	{ (Petition-day) unopposed Petitions and Appeals.

**Saturday . . . 12** } **Appeal Motions and Appeals.**  
**N. B.**—Such days as his Lordship is occupied in the House of Lords excepted.

**Master of the Rolls.**  
 See page 64, ante.

**Vice-Chancellor of England.**

**Saturday . May 22** Motions.  
**Monday . . . 24** (Petition-day)  
**Tuesday . . . 25** } Pleas, Demurrers, Exceptions, Causes, and Further Directions.  
**Wednesday . . . 26** }  
**Thursday . . . 27** Motions.  
**Friday . . . 28** Short Causes and Causes.  
**Saturday . . . 29** } Pleas, Demurrers, Exceptions, Causes, and Further Directions.  
**Monday . . . 31** }  
**Tuesday . June 1** }  
**Wednesday . . . 2** }  
**Thursday . . . 3** Motions.  
**Friday . . . 4** } (Petition-day) Petitions, Short Causes, & Causes.  
**Saturday . . . 5** }  
**Monday . . . 7** } Pleas, Demurrers, Exceptions, Causes, and Further Directions.  
**Tuesday . . . 8** }  
**Wednesday . . . 9** }  
**Thursday . . . 10** }  
**Friday . . . 11** } (Petition-day) Petitions, Short Causes and Causes.  
**Saturday . . . 12** Motions.

**Vice-Chancellor Knight Bruce.**

**Saturday . May 22** Motions and Causes.  
**Monday . . . 24** } (Petition-day) Petitions and Causes.  
**Tuesday . . . 25** } Pleas, Demurrers, Exceptions, Causes, and Further Directions.  
**Wednesday . . . 26** } Bankrupt Petitions and Ditto.  
**Thursday . . . 27** Motions and Causes.  
**Friday . . . 28** } Pleas, Demurrers, Exceptions, Causes, and Further Directions.  
**Saturday . . . 29** Short Causes and Ditto.  
**Monday . . . 31** } Pleas, Demurrers, Exceptions, Causes, and Further Directions.  
**Tuesday . June 1** }  
**Wednesday . . . 2** } Bankrupt Petitions, and Ditto.  
**Thursday . . . 3** Motions and Causes.  
**Friday . . . 4** } (Petition-day) Petitions and Causes.  
**Saturday . . . 5** Short Causes and Causes.  
**Monday . . . 7** } Pleas, Demurrers, Exceptions, Causes, and Further Directions.  
**Tuesday . . . 8** }  
**Wednesday . . . 9** } Bankrupt Petitions and Ditto.  
**Thursday . . . 10** } Pleas, Demurrers, Exceptions, Causes, and Further Directions.  
**Friday . . . 11** } (Petition-day) Petitions and Ditto.  
**Saturday . . . 12** Short Causes and Motions.

**Vice-Chancellor Stirling.**

**Saturday . May 22** Motions and Causes.

**Monday . . . 24** } Pleas, Demurrers, Exceptions, Causes, and Further Directions.  
**Tuesday . . . 25** }  
**Wednesday . . . 26** }  
**Thursday . . . 27** Motions and ditto.  
**Friday . . . 28** } Pleas, Demurrers, Exceptions, Causes, and Further Directions.  
**Saturday . . . 29** } Short Causes, Petitions, (unopposed first,) and Causes.  
**Monday . . . 31** } Pleas, Demurrers, Exceptions, Causes, and Further Directions.  
**Tuesday . June 1** }  
**Wednesday . . . 2** }  
**Thursday . . . 3** Motions and ditto.  
**Friday . . . 4** } Pleas, Demurrers, Exceptions, Causes, and Further Directions.  
**Saturday . . . 5** } Short Causes, Petitions, (unopposed first,) and causes.  
**Monday . . . 7** } (Petition-day) Pleas, Demurrers, Exons., Causes, and Further Directions.  
**Tuesday . . . 8** }  
**Wednesday . . . 9** }  
**Thursday . . . 10** }  
**Friday . . . 11** } Short Causes, Petitions, (unopposed first,) and Causes.  
**Saturday . . . 12** Motions and Causes.

**COMMON LAW SITTINGS.**

**Queen's Bench.**

*In and after Trinity Term, 1847.*

**MIDDLESEX.**

*In Term.*

**1st Sitting, Wednesday . . . . . May 26**  
 And two following days at Eleven o'clock.  
**2nd Sitting, Saturday . . . . . May 29**  
 And subsequent days at Eleven o'clock.  
**3rd Sitting, Thursday . . . . . June 10**  
 At  $\frac{1}{2}$  past Nine o'clock precisely, for Undeferred Causes only.

A list of such remanets as appear fit to be tried in Term will be printed immediately, but on the statement of either side that a cause is too long to be tried in Term, it will be withdrawn from such list, provided the other side have two days' notice of the application at the Marshal's to postpone, and do not oppose the application on good grounds—the usual number of completed and new causes will be put into the list day by day in their usual order.

**Sitting after Term, Monday . . . . . June 14**

**LONDON.**

*In Term.*

**Sitting at 10 o'clock on Friday . . . . . June 11**  
 For Undeferred Causes and such as the Judge considers fit to be taken.

*After Term.*

**Tuesday . . . . . June 15**  
 (To adjourn.)

**Common Pleas.**

*In Term.*

**MIDDLESEX.**

**LONDON.**

**Wednesday . May 26 | Friday . . . May 28**  
**Wednesday . June 2 | Friday . . . June 4**

## After Term.

MIDDLESEX.

LONDON.

Monday . . . June 14 | Tuesday . . . June 15

The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Tuesday the 15th June, in London, no causes will be tried, but the court will adjourn to a future day.

## Exchequer.

Sittings in Trinity Term, 1847.

Saturday . . . May 22	{	Banc. Peremptory Paper after Motions.
Monday . . . . . 24		Ditto, before Motions.
Tuesday . . . . . 25	{	Nisi Prius, Middlesex 1st Sitting.
Thursday . . . . . 27		Banc, Crown cases.
Friday . . . . . 28	{	Banc, Demurrers. — Nisi Prius, London 1st Sitting.
Monday . . . . . 31		Banc, Special Cases.
Tuesday . . . June 1	{	Banc, Errors. — Nisi Prius, Middlesex 2nd Sitting.
Wednesday . . . . . 2		Demurrers.
Friday . . . . . 4	{	Banc, Special Cases. — Nisi Prius, London 2nd Sitting.
Saturday . . . . . 5		Banc, Crown Cases. — Nisi Prius, Ditto by adjournment.
Monday . . . . . 7	{	Banc, Demurrers.
Tuesday . . . . . 8		Nisi Prius, Middlesex 3rd Sitting.

## COMMON LAW CAUSE LISTS.

## Queen's Bench.

## NEW TRIALS.

Remaining undetermined at the end of Easter Term, 1847.

Easter Term, 1846.

York.—Worth v. Gresham and another—Dundas.

(Stands over for Judgment in a similar case in error.)

Liverpool.—Doe d. Hayward v. Tinslay—Crompton.

(Stands for arrangement.)

Carmarthen.—Thomas, Esq. v. Fredericks, Esq.—E. V. Williams.

Carmarthen.—Same v. Same—Chilton.

Trinity Term, 1846.

London.—Nicholls v. Atherstone—W. H. Watson.

London.—The Queen v. Schlesinger.—Sir F. Thesiger.

Michaelmas Term, 1846.

Middlesex.—Gurney the elder v. Gurney and another—Sir F. Thesiger.

Middlesex.—Collett v. Curling—W. H. Watson.

London.—Boyd v. Royal Exchange Assurance Company—Serjeant Shee.

(Part heard.)

London.—Herring v. Meteyard.—W. H. Watson.

London.—Simpson v. Margitson and others.—Same.

Montgomery.—Middleton v. Bedward and another.—Welsby.

Carnarvon.—Davies, a pauper, v. Williams—Townshend.

Chester.—Joynson v. Garfitt—Welsby.

Notts.—Pott and another v. Flather—Wildman.

Leicester.—Hassell v. Heming—Humphrey.

York.—Lockwood v. Wood—W. H. Watson.

Liverpool.—M'Ewin v. Wood, the younger, and others—Knowles.

Liverpool.—Hobson and others, assignees, &c. v. Garner.—Same.

Kent.—Nunn v. Jackson—Serjeant Channell.

Kent.—Absolon v. Marks.—Peacock.

Essex.—Constable v. Martin.—Serjeant Channell.

Surrey.—Carruthers v. West.—Charnock.

Norwich.—Burton v. Scott—O'Malley.

Norwich.—Linford, a pauper, v. Fitzroy—Same. Carmarthen.—Bowen v. Owen and another—W. H. Watson.

Devon.—Harrison v. Bankart—Crowder.

Cornwall.—Stevens v. Jeacocke—Cockburn.

Wills.—Robins v. Fennell and others—Crowder. Somerset.—The Queen v. Chorley—Serjeant Kinglake.

Tried during Michaelmas Term, 1846.

Middlesex.—Greville v. Stultz and others—Barston.

Hilary Term, 1847.

Middlesex.—Richardson v. Berkeley—Knowles.

Middlesex.—Conles v. Simmonds—Serjeant Shee.

Middlesex.—Normansel v. Croft—W. H. Watson.

Middlesex.—Doe d. Sumner v. Nash—Peacock.

Middlesex.—The Queen v. Long, Esq.—Humphrey.

Middlesex.—Same v. Watson—Sir F. Thesiger. Middlesex.—Same v. Button and others—Serjeant Allen.

Middlesex.—Mountain v. Wilmot—Crowder.

Middlesex.—Blundell v. Drummond—Bramwell.

Middlesex.—Jones and another v. Blunt and others—Sir F. Thesiger.

Middlesex.—Gent v. Cutts.—Willes.

London.—Thame v. Boast—Serjeant Shee.

London.—Penniall v. Harbone—Knowles.

London.—Spinks v. Bardell—Serjeant Wilkins.

London.—Sims v. Henderson—Barston.

London.—Henderson v. Henderson—Same.

London.—Mitchell v. Moore.—Cockburn.

Tried during Hilary Term, 1847.

Middlesex.—Flower v. Rosser.—Wordsworth.

Easter Term, 1847.

Middlesex.—The Queen v. Mary Nixon—Serjeant C. C. Jones.

London.—Curling v. Young and others—Humphrey.

London.—Newton and another v. Belcher—Crowder.

London.—Burrows and another v. Gabriel and others—Same.

Kent.—Lilley, a pauper, v. Elwin—Serjeant Shee. Surrey.—Parratt v. Newte—Serjeant C. C. Jones.

Bedford.—Doe d. Crawley v. Gutteridge—O'Malley.

Suffolk.—Pye v. Mumford—Andrews. Norfolk.—Angerstein v. Caius College, Cambridge—O'Malley.

Lincoln.—Huntley v. Russell and another—Whitehurst.

Warwick.—Bower v. Wood—Same. Lancaster.—Turner and another v. Hartley—Martin.

*Durham.*—Wren v. Healop and another—Knowles.

*Durham.*—Wright v. Gibson—Same.

*City, York.*—Nicol v. Alison—Same.

*York.*—Pollock, the younger v. Stables—Baines.

*York.*—Kilner and another v. Preston—Same.

*York.*—Lee and others v. Dawson—Same.

*Liverpool.*—Walker v. Mellor and another—W.

H. Watson.

*Liverpool.*—Yates v. Fenton—Knowles.

*Flint.*—M<sup>r</sup> Killock v. Cooke—Townshend.

*Chester.*—Sutton v. Swanwick and another—Chil-  
ton.

*Worcester.*—Cheshire v. Hair—Godson.

*Hereford.*—Doe d. Huck, a pauper, v. Rimall and  
others—Same.

*Gloucester.*—Parratt v. Lambert—Same.

*Somerset.*—Robertson and another v. Norris—  
Crowder.

*Somerset.*—The Queen v. Inhabitants of Tything,  
East Mark—Cockburn.

*Somerset.*—The Queen v. Inhabitants of Tything  
Moore—Same.

*Tried during Easter Term, 1847.*

*Middlesex.*—Levi v. Irwin—Charnock.

#### SPECIAL CASES AND DEMURRERS.

*Trinity Term, 1847.*

Hughes and Co.—Berkley v. Kemp, dem.

Whitmore and Co.—Morris, Bt., v. Duke of  
Beaufort, dem.

(Stands over by consent.)

Gabriel and N.—Godden v. Watts, dem.

Fyson and C.—Clayton v. Hozier, dem.

Dean and Son.—Minshall, sen., v. Roberts, dem.

Williamson and H.—Robson v. Oliver and an-  
other, dem.

Alger.—Doe d. Harris and others v. Taylor,  
special case.

Walker and Co.—Doe d. Biddulph and others  
v. Poole, special case.

Yallop.—Bownes v. Marsh, N. O. V., from N. T.  
paper.

Rickards and W.—Wood v. Mytton, Arrest of  
Judgment, from N. T. paper.

Fletcher and R.—Barker v. Jervis, dem.

Hughes and Co.—Berkeley v. De Veau, sued,  
&c. dem.

Sandour.—Churchwardens, &c., of St. Nicholas,  
Deptford, v. Sketchley, special case.

Roy and Co.—Hale v. Riviere, dem.

Ravenscroft.—Parker v. Gill, dem.

Raw.—Wilmot v. Batson, dem.

Kempster.—Hall v. Edmonds, dem.

Parker.—Ellis and others, assignees, &c., v.  
Russell and others, special verdict.

Morphett.—Plumer v. Robertson, dem.

Codd.—Lamond and others v. Erlam, dem.

J. Lewis.—Lewis v. Harris, dem.

Briggs and Son.—Howard v. Clarkson, dem.

Flower.—Flower v. Newton, dem.

Same.—Same v. Macdonald, dem.

Elmslie and P.—Connop and another, executors,  
&c. v. Levy, dem.

Denton.—Williams v. Want, dem.

Williamson.—Hilton v. Whitehead, special case.

Hawkins and Co.—Maldon v. Fyson, special  
case.

Atkinson.—Webster v. Watts, dem.

Same.—Ambridge v. Sylvester, dem.

Wire and Co.—Hills v. Croll, dem.

Johnson and Co.—Clarkson v. Glover, dem.

Barker and B.—Vigers v. Dean and Chapter of  
St. Pauls and others, dem.

Tribe.—Bailey v. Harris, dem.

Ashley.—Sayer v. Dufaur, dem.

Dufaur.—Harvey v. Sayer, dem.

Ashley.—Groves v. Barnett and another, dem.

Everest and Co.—King v. Marman and others,  
dem.

Johnson and Co.—Hall v. Bainbridge, special  
case.

Lawrence and Co.—Bartlett v. Chamberlain, dem.

Philpot.—Morrell v. Biddle, special case.

Butt.—The Right Hon. H. Hobhouse v. James,  
special case.

Husband and W.—Jones v. Sawkins, dem.

Lewis.—Nathan v. Lazarus, dem.

Angell.—Angell v. Harrison and others, dem.

Fyson and C.—Phillips v. Curling, special  
case.

Pemberton.—Mills v. Blackall, dem.

Brook.—Hodgson v. Lee, dem.

Bigg and Co.—Jones, executors, &c. v. Meares,  
executors, &c., special case.

P. and C. Rogers.—Banks v. Newton, error.

Fluder.—Meares v. Phangley, dem.

Wright.—Filliter v. Phippard, arrest of judgment.

Husband and W.—Reeves and another v. Pedlar  
and another, dem.

Same.—Barber v. Lemon, dem.

Rushbury.—Hulls v. Lea, dem.

Stretton.—Lock v. Neale, dem.

White.—Doe d. Lord v. Kingsbury, special case.

Mortimer.—Newbatt v. Salmond and others, dem.

Gregory and Co.—The Cork and Brandon Rail-  
way Company v. Cazenove, dem.

#### Queen's Bench.—Crown Paper.

*Trinity Term, 1847.*

For Thursday 27th May.

*Surrey.*—The Queen v. The Churchwardens of  
St. George the Martyr, Southwark, (de Bethlehem  
Hospital.)

*Surrey.*—The Queen v. The Churchwardens, of  
St. George the Martyr, Southwark, (de Bridewell  
and St. Thomas's Hospital.)

*Bucks.*—The Queen v. The Great Western Rail-  
way Company.

*Bucks.*—The Queen v. The Great Western Rail-  
way Company.

*Monmouthshire.*—The Queen v. The Inhabitants  
of Hartbury, in Gloucestershire.

*Warwick.*—The Queen v. Thomas Collins.

*Worcestershire.*—The Queen v. The Inhabitants of  
Halesowen.

*Lancashire.*—The Queen v. The Overseers of  
Oldham Union.

*Yorkshire.*—The Queen v. The Justices of the  
West Riding, (pros. of Churchwardens of Liver-  
pool.)

*Somersetshire.*—The Queen v. William Richardson.

*London.*—The Queen v. Archibald Douglas, Esq.

*Birmingham.*—The Queen v. Thomas Phillips  
and another, Justices, &c.

*Gloucestershire.*—The Queen v. The Inhabitants  
of Alderley.

*Wigan.*—The Queen v. Thomas Grimshaw.

*Carnarvonshire.*—The Queen v. The Inhabitants  
of Rhoscolyn, in Anglesey.

*Essex.*—The Queen v. The Inhabitants of St.

*Surrey.*—The Queen v. The Inhabitants of St.  
Giles-in-the-Fields, Middlesex.

*Middlesex.*—The Queen v. The Inhabitants of  
St. George, Bloomsbury.

*West Riding, Yorkshire.*—The Queen v. The In-  
habitants of Stainforth.

*Cornwall.*—The Queen v. the Inhabitants of Mylor.

*Middlesex.*—The Queen v. The Inhabitants of St. Clement Danes.

*Cheshire.*—The Queen v. The Inhabitants of Dukinfield.

*Lancashire.*—The Queen v. The Inhabitants of Leeds, Yorkshire.

*Middlesex.*—The Queen v. William Belton.

*Middlesex.*—The Queen v. Charles Saffrey.

*Middlesex.*—The Queen v. Morris Myers.

*Bucks.*—The Queen v. The Churchwardens of parish of Ashe, Hants.

*Middlesex.*—The Queen v. The Inhabitants of Hammersmith.

*Cheshire.*—The Queen v. Joseph Thompson.

*Liverpool.*—The Queen v. Joseph Thompson.

*Cheshire.*—The Queen v. The Inhabitants of Macclesfield.

*Staffordshire.*—The Queen v. John Koen.

*Carnarvonshire.*—The Queen v. The Inhabitants of Holywell, Flintshire.

*Cornwall.*—The Queen v. Henry Nicholls.

*Worcestershire.*—The Queen v. The Commissioners for improving, &c. the Town of Dudley.

*Monmouthshire.*—The Queen v. Thos. Turk.

*Lancashire.*—The Queen v. James Lord.

*Wilts.*—The Queen v. The Inhabitants of St. Thomas, New Sarum.

*London.*—The Queen v. Charles Wright and another.

*Essex.*—John Keen, plaintiff in error, v. The Queen, defendant in error.

*Lindsey.*—The Queen v. The Inhabitants of Coningsby.

*West Riding, Yorkshire.*—The Queen v. The Inhabitants of Carlton.

*West Riding, Yorkshire.*—The Queen v. The Inhabitants of Addingham.

*Wilts.*—The Queen v. The Inhabitants of Colerne.

*Middlesex.*—The Queen v. Reuben Hunt and others.

*Devonshire.*—The Queen v. The Inhabitants of East Stonehouse.

*West Riding, Yorkshire.*—The Queen, v. The Inhabitants of Gomersal.

*Leicestershire.*—The Queen v. The Rev. Edward Butterworth Shaw, clk.

*Middlesex.*—The Queen v. The Commissioners of Stamps and Taxes.

*Westmoreland.*—The Queen v. Martin Irving, Esq. (de Henry Anderson.)

*Westmoreland.*—The Queen v. Martin Irving, Esq. (de Timothy Robinson.)

*Middlesex.*—The Queen v. The Inhabitants of St. Pancras, (settlement of Parsons.)

*Middlesex.*—The Queen v. The Inhabitants of St. Pancras, (settlement of Taylor.)

*Surrey.*—The Queen v. The London and South Western Railway Company.

*West Riding, Yorkshire.*—The Queen v. The Inhabitants of Monk Bretton.

*Lancaster.*—The Queen v. John Armitage.

*Essex.*—The Queen v. The Inhabitants of Witham.

*Surrey.*—The Queen v. The Inhabitants of St. Mary, Whitechapel, Middlesex.

*Cornwall.*—The Queen v. Richard William Riley.

*West Riding, Yorkshire.*—The Queen v. The Churchwardens and Inhabitants of Longwood.

*Devonshire.*—The Queen v. William Warren and others, Feoffees of Ottery St. Mary Charities.

*England.*—The Queen v. James Chadwick, defendant in Error on prosecution of Ann Fisher.

*London.*—The Queen v. Richard Dunn.

*Cambridge.*—The Queen v. The Inhabitants of hwell, Herts.

## Birchquer of Pleas.

### PEREMPTORY PAPER.

For Trinity Term, 1847.

To be called on the first day of the Term, after the motions, and to be proceeded with the next day, if necessary, before the motions.

### Rule Nisi.

27th April 1847.—Burnside v. Dayrell — Mr. Crowder.—Mr. Martin.

6th May, 1847.—M'Intosh v. Midland Counties Railway Company—Mr. Martin, Mr. Macaulay.

29th April, 1847.—Sleddon and another, assignees, &c. v. Dixon, P. O., &c.—Mr. Martin, Mr. Burnie.

4th May, 1847.—Barker v. Teague—Mr. Martin, Mr. Serjeant Clarke.

4th May, 1847.—Hussell v. Wilde—Mr. Humfrey, Mr. Willes.

7th April, 1847.—Corner v. Ward and others—Mr. Humfrey.

4th May, 1847.—Marks v. Ridgway—Mr. Miller, Mr. Pashley.

4th May, 1847.—Ferguson and another v. Bates —Mr. Cowling, Mr. Jiggins.

1st May, 1847.—Oates v. Moore and another—Mr. Addison, Mr. Hill.

23rd April, 1847.—Bayley and another v. Buckland and others—Mr. Robinson, Mr. Martin.

23rd April, 1847.—Bayley and another, executors, &c. v. Buckland and others—Mr. Robinson, Mr. Martin.

26th April, 1847.—Hanby v. Farrell, jun.—Mr. Temple, Mr. Atherton.

4th May, 1847.—Re Lewis, exparte Collette—Mr. Petersdorff, Mr. Miller.

29th April, 1847.—Hibberd v. Knight, Esq.—Mr. M. Smith, Mr. Crowder.

26th April, 1847.—Parsons v. Banfield—Mr. James, Mr. Willes.

29th April, 1847.—Phelps v. Jones—Mr. Rickards.

3rd May, 1847.—Bonell v. Pugh—Mr. Willes, Mr. Pashley.

22nd April, 1847.—Sherratt v. Parkes—Mr. Gray, Mr. Hawkin.

26th April, 1847.—Roche v. Champein—Mr. Bovill, Mr. Miller.

29th April, 1847.—Grant, a pauper, v. Mackenzie, sued, &c.—Mr. Billing, Mr. Humfrey.

27th April, 1847.—Grant, a pauper, v. Mackenzie, sued, &c.—Mr. Billing, Mr. Humfrey.

26th April, 1847.—Everest and others v. Clark—Mr. Burnie, Mr. Brown.

1st May, 1847.—Grieve and another v. Denman —Mr. Maynard, Mr. Lush.

### SPECIAL CASES.

#### For Judgment.

Hammond v. Peacock, by order of Mr. Baron Alderson.

Harris v. Wall, by order of Nisi Prius.

(Heard 3rd May, 1847.)

#### For Argument.

Doe d. Knight v. Chaffey, jun. and another, by order of Nisi Prius.

(25th Jap. 1847, part heard, case to be amended.)

Sanderson v. Dobson, by order of the Master of the Rolls.

Doe d. Hutchinson v. Whitcome, by order of Mr. Baron Alderson.

Newnham v. Coles, clk.—by order of Nisi Prius.

Wilson v. Eden, Bt., and others, by order of the Master of the Rolls.

Hall v. Lack, by order of Nisi Prius.

*Doe d. Adams v. Bridger*, by order of *Nisi Prius*.  
*Baddeley, clk. v. Gingell*, by order of Baron  
 Parke.

*Doe d. Burton v. White*, by order of *Nisi Prius*.  
*Doe d. Knight v. Spencer*, Ditto.  
*Harries v. Hooper*, Ditto.  
*Lee v. Stone and others*, by order of V. C. Knight  
 Bruce.

*Taylor v. Dawson, Esq.*, by order of *Nisi Prius*.  
*Salkeld, clk. v. Johnstone and others*, by order of  
 the Lord Chancellor.

*Galloway and another v. Cole*, by order of *Nisi  
 Prius*.

*Nicholson, clk. v. Richmond*, by award.  
*Ramsbottom v. Duckworth and another*, by rule  
 of court.

*Marsh v. Davies and others*, by order of *Nisi Prius*.  
*South Eastern Railway Company v. Pickford and  
 others*, by order of Baron Alderson.

*Tobin, Knt. v. Simpson, exors., &c.*, by order of  
 Justice Erle.

*Morgan, admix., &c., v. Jeffreys*, by order of  
 Justice Erle.

*Molton and wife, admix., &c., v. Camroux, sec.  
 &c.*, special verdict.

*Belcher and others, assignees, &c., v. Bellamy  
 and another, exors., &c.*, by order of Baron Alderson.

## DEMURRERS.

*Trinity Term, 1847.*

*For Judgment.*

*Duncan v. Benson.*

(Heard 5th May, 1847.)

*Chamberland v. The Chester and Birkenhead  
 Railway Company.*

(Heard 8th May 1847.)

*For Argument.*

*Griffiths v. Pike.*

(To stand over until special case settled.)

*Washbourne v. Burrows.*

*Bromage and another v. Lloyd and another.*

*Duke, Knt. and others v. Dive.*

*Galsworthy v. Strutt.*

*Good and another v. Burton.*

*Shaw v. Glascott, sued, &c.*

*Sidebottom v. The Commissioners of the Glossop  
 Reservoirs.*

*Judson v. Bowden.*

*Hill and others v. The Taff Vale Railway Co.*

*Matchett v. Moore.*

*Gross v. Wolff.*

*Hall v. Lack.*

*Cook v. Moylan.*

*Duke, Knt., and others v. Castello.*

*Lansdale v. Clarke and another.*

*Ramuz v. Crowe.*

*Carter v. Wormald.*

*Powles and others v. Saenz.*

*Berdoo v. Spittle.*

*Daniels v. Whitby.*

*Duke, Kt., and others v. Forbes.*

*Grout v. Enthoven, sued, &c.*

*Spindler and wife v. Grellett.*

*Worthington v. Wanklyn.*

*Graham and others, assignees, v. Allsopp.*

*Jarvis v. Dircks.*

*Galley, administratrix, v. Milne.*

*Hart v. Bowlby.*

*Alder and another, assignees, &c., v. Newman  
 and another.*

*Higgs v. Mortimer.*

*Roper v. Hanson.*

*Ramsden v. The Manchester South Junction and  
 Atrincham Railway Company.*

*Hasluck v. The Eastern Counties Railway Co.*

*Clark v. Sherwood.*

*Perrall and others v. Jones and another.*

*Carle v. Oliver.*

*Price and another, executors, v. Woodhouse and  
 another.*

*Kemp v. Nash*, (sued with Hutton and another.)

*Kemp v. Hutton and another*, (sued with Nash.)

*Bryant c. Babbett.*

*Bates v. Townley and another.*

*Kirkwood and another v. Musgrave.*

*Brown and another v. Whiteway and others.*

*Gravatt v. Ward,*

*Collins v. Ozanne and others.*

*Dorrington v. Carter.*

*Ricketts and others v. Phillips.*

*Craig v. Levy*, (in error.)

*Parker, executor, v. Harrison.*

*Eyre v. Waterhouse.*

*Earl of Lindsey v. Capper and others.*

*Brine v. Bazalgette.*

*Pratt v. Pratt and others.*

*Austen v. Kolle.*

*Hewes v. Angell.*

*Wambersie and another v. Phillips and another.*

*Sedman v. Walker, Esq., and Stephenson.*

*Sadler and others v. Johnson.*

*Davis (qui tam) v. Arden.*

## NEW TRIAL PAPER.

*For Trinity Term, 1847.*

*For Judgment.*

*Moved Michaelmas Term, 1846.*

*Berks, Mr. Justice Maule.*—*Owen v. De Beau-  
 voir—Whateley.*

(Heard 10th Feb. 1847.)

*Liverpool, Mr. Justice Cresswell.*—*Sleddon and  
 another, assignees, &c. v. Dixon, P. O.—Mr. Martin.*  
 (Heard 13th Feb. 1847.)

*Moved Hilary Term, 1847.*

*Middlesex, Lord Chief Baron.*—*Biggs v. Laurie  
 and another—Mr. Humfrey.*

(Heard 6th May, 1847.)

*For Argument.*

*Moved Hilary Term, 1847.*

*London, Lord Chief Baron.*—*Clark v. Newsam and  
 Edwards—Sir F. Thesiger.*

*London, Lord Chief Baron.*—*M'Cowlliffe v. Co-  
 burn—Mr. Crowder.*

*London, Lord Chief Baron.*—*Hooper and another  
 v. Treffry—Mr. Crowder.*

*London, Lord Chief Baron.*—*Goldicutt, on affida-  
 vits, v. Beugin—Mr. Cockburn.*

*London, Lord Chief Baron.*—*Vollans v. Fletcher—  
 Mr. Martin.*

*London, Lord Chief Baron.*—*Lamert v. Heath—  
 Mr. Martin.*

*London, Lord Chief Baron.*—*Richardson v. Car-  
 michael, Bt.—Mr. Martin.*

*London, Lord Chief Baron.*—*Simmonds v. Muntz  
 and others—Mr. Humfrey.*

*London, Lord Chief Baron.*—*Molton and wife v.  
 Camroux—Mr. Gurney.*

*London, Lord Chief Baron.*—*Wolley v. Steinitz—  
 Mr. Cleasby.*

*London, Lord Chief Baron.*—*Barnard v. Colls—  
 Mr. Bramwell.*

*London, Lord Chief Baron.*—*Harnett v. Bates—  
 Mr. Bramwell.*

*London, Lord Chief Baron.*—*Eager, on affidavits,  
 v. Grimwood—Mr. Prentice.*

*Derby.*—*Britt, on affidavits, v. Pasbleys and others  
 —Mr. Whitehurst.*

*Moved after the 4th day of Hilary Term, 1847.*

*Middlesex, Lord Chief Baron.*—*Dyer v. Green—  
 Mr. Watson.*

*Middlesex, Lord Chief Baron.*—Caley v. Johnson—Serjeant Wilkins.  
*Middlesex, Lord Chief Baron.*—Boulton v. Mills—Mr. Crowder.  
*Middlesex, Mr. Baron Rolfe.*—Fessenmeyer v. Adcock—Mr. Watson.  
*Middlesex, Mr. Baron Rolfe.*—Semple the younger v. Pink.—Mr. Miller.

*Moved Easter Term, 1847.*

*Middlesex, Lord Chief Baron.*—Wakley v. Cooke. Mr. Cockburn.  
*Middlesex, Lord Chief Baron.*—Pictor v. Taft, (sued as Taff)—Mr. Martin.  
*Middlesex, Lord Chief Baron.*—Hitchcock, administrator, &c. v. Beavan—Mr. Martin.  
*Middlesex, Lord Chief Baron.*—Dunn, Esq. v. Cox and others—Mr. Martin.  
*Middlesex, Lord Chief Baron.*—Collins v. Bradley—Mr. Watson.  
*Middlesex, Lord Chief Baron.*—Casse v. Cockburn and another—Mr. Humfrey.  
*Middlesex, Lord Chief Baron.*—Sturm and another v. Jeffree and another—Mr. Humfrey.  
*Middlesex, Lord Chief Baron.*—Goldchede v. Swan—Mr. Serjeant Jones.  
*Middlesex, Lord Chief Baron.*—Barker v. Bradley—Mr. Hoggins.  
*Middlesex, Lord Chief Baron.*—Wainman v. Kynman—Mr. Lush.  
*London, Lord Chief Baron.*—Mason v. Owen and others—Mr. Attorney-General.  
*London, Lord Chief Baron.*—Ralli v. Denistoun and others—Mr. Attorney-General.  
*London, Lord Chief Baron.*—Boyd and another v. Mangles and others—Mr. Attorney-General.  
*London, Lord Chief Baron.*—Clark v. Chaplin—Sir F. Thesiger.  
*London, Lord Chief Baron.*—Entwistle and another v. Dent and others—Sir F. Kelly.  
*London, Lord Chief Baron.*—Hesletine v. Siggers—Mr. Crowder.  
*London, Lord Chief Baron.*—Ollive v. Booker—Mr. Crowder.  
*London, Lord Chief Baron.*—Ollive v. Booker—Mr. Watson.  
*London, Lord Chief Baron.*—Green and others, assignees, v. Laurie, Knt., and others—Mr. Martin.  
*London, Lord Chief Baron.*—Vivian v. Mowatt—Mr. Martin.  
*London, Lord Chief Baron.*—Alexander and another v. Booker—Mr. Watson.  
*London, Lord Chief Baron.*—Barber, on affidavits, v. Grace—Mr. Whitehurst.  
*London, Lord Chief Baron.*—Pell v. Jones—Serjeant Allen.  
*London, Lord Chief Baron.*—Phillips and another v. Fisher—Mr. James.  
*Cambridge, Lord Chief Baron.*—Southee v. Denny—Mr. Andrews.  
*Norwich, Lord Chief Baron.*—Massey, executor, &c. v. Johnson and another, executors, &c.—Mr. Andrews.  
*Warwick, Mr. Baron Parks.*—Neville v. Roderick—Mr. Humfrey.  
*Warwick, Mr. Baron Parke.*—Wallis v. Swinbourne—Mr. Waddington.  
*York, Mr. Baron Alderson.*—Perkins v. Bradley and another—Mr. Martin.  
*Liverpool, Mr. Baron Rolfe.*—Bayliffe v. Butterworth—Mr. Knowles.  
*Liverpool, Mr. Baron Rolfe.*—Cooke v. Blake—Mr. Knowles.  
*Liverpool, Mr. Baron Rolfe.*—Caine v. Horsfall—Mr. Martin.

*Liverpool, Mr. Baron Rolfe.*—Broadbent and others v. Fernley and another—Mr. Martin.  
*Liverpool, Mr. Baron Rolfe.*—Whitwell v. Harrison—Mr. Watson.  
*Oxford, Mr. Serjeant Gaseles.*—Winterbourne v. Wagner—Mr. Alexander.  
*Worcester, Mr. Serjeant Gaseles.*—Harris and another v. Grissell and another—Sir F. Kelly.  
*Stafford, Mr. Justice Maule.*—Stagg v. The Earl of Miltown—Mr. Serjeant Talfourd.  
*Gloucester, Mr. Justice Maule.*—Christy and others v. Powell and others—Mr. Whateley for defendant Pidgeon.  
*Gloucester, Mr. Justice Maule.*—Chandler v. Morse—Mr. Godson.  
*Gloucester, Mr. Justice Maule.*—Balme v. D'Egville—Mr. Keating.  
*Lewes, Lord Chief Justice Wilde.*—Napper v. Napper—Serjeant Channell.  
*Lewes, Lord Chief Justice Wilde.*—Biddle, executor, &c., v. Biddle.—Serjeant Shee.  
*Kingston, Lord Denman.*—Cooper, Esq., P. O. v. Wicks—Serjeant Channell.  
*Kingston, Lord Denman.*—Hooper and another v. Williams—Serjeant Channell.  
*Kingston, Lord Denman.*—Boileau v. Rudlin—Serjeant Shee.  
*Kingston, Lord Denman.*—Wood v. Cooke—Mr. Chambers.  
*Kingston, Lord Denman.*—Robinson v. Harman—Mr. Chambers.  
*Kingston, Lord Denman.*—Newry and Enniskillen Railway Company v. Edmonds—Mr. Bramwell.  
*Chester, Mr. Justice Coltman.*—Bates v. Townley and another—Mr. Welsby.  
*Chester, Mr. Justice Coltman.*—Bates v. Townley and another—Mr. Townshend.  
*Cardigan, Mr. Justice Wightman.*—Doe d. Lewis v. Lewis—Mr. Benson.  
*Winchester, Mr. Justice Cresswell.*—Newlyn v. Shadwell—Mr. Cockburn.  
*Dorset, Mr. Justice Cresswell.*—Saint v. Cox—Mr. Cockburn.  
*Taunton, Mr. Justice Williams.*—Wait and another v. Baker—Mr. Crowder.  
*Taunton, Mr. Justice Williams.*—Wait and another v. Baker—Mr. Butt.

*Moved after the 4th day of Easter Term, 1847.*

*Middlesex, Mr. Baron Alderson.*—Wilkins v. Grant—Mr. Crowder.  
*London, Mr. Baron Alderson.*—Chapman v. Geiger.—Mr. Bramwell.

THE EDITOR'S LETTER BOX.

WE are requested by Messrs. N. Stevens, Fearon and Gosling, of No. 1, Gray's Inn Square, to state that an error is made in the Law List just issued, in describing Mr. Thomas Brook Bridges Stevens, of 23, Bolton Street, Piccadilly, and of Tamworth, as a member of their firm, with which he is not in any way connected.

*Errata.*—*Hughes v. Williams*, vol. 34, p. 35, head-note. For "the court refused to strike out a cause," read "consented."

Page 45, col. 2, line 61, for "if fully carried out, will lead to its entire extinction," read "this has been rested upon principles, which, if fully carried out, would lead to the entire extinction of the right itself."

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

---

SATURDAY, MAY 29, 1847.

---

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

---

## PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

---

THE business of the session begins to be conducted, in both houses of parliament, in a manner which indicates the universal consciousness of a speedy prorogation and an approaching dissolution. The members of the House of Commons are so anxious to avail themselves of the earliest opportunity of paying their personal respects to their constituents, that it requires some management to secure the continued attendance of forty members; and the Peers appear to feel that sufficient occupation is afforded to them in discussing the measures transmitted from the lower house. Under such circumstances, it can scarcely be matter of surprise, that bills recommended by urgent and pressing necessity do not command very general attention, and that measures introduced a short time since, with great pomp and pretension, have now been thrown aside or indefinitely postponed. Indeed, some doubt may be entertained whether any one of the bills in progress, in which the legal profession are peculiarly interested, will be persevered in. It is unnecessary to add, that this ought to be looked upon rather as matter of congratulation than of regret. Perhaps hasty and ill-considered legislation is never beneficial to the community: it is peculiarly injurious when applied to legal subjects.

In the present tone and temper of the legislature, it would be vain to expect that any legal questions could be fully discussed or deliberately considered. It is more desirable, therefore, that even alterations which are not of a questionable character,

should be postponed to a more fitting season. The government, we understand, have notified their intention not further to unsettle the *Law of Settlement* at present. The important changes contemplated in the *Law of Railways* and the *Law of Agricultural Tenant-Right*, we apprehend, will also stand over. As to the *Health of Towns Bill*, which involved so many interests, the noble lord by whom it was introduced has already modified his measure by restricting the operation to the country corporate towns in England and Wales, and in announcing this and other alterations, does not appear to display a determined intention to carry any portion of the bill during the present session. Of the bills introduced by members of the legislature unconnected with government, we may notice Lord Denman's Bill for amending the Law relating to *Threatening Letters*, Mr. Masterman's *City Small Debts Courts Bill*, and Sir John Pakington's Bill for the *Speedy Trial and Punishment of Juvenile Offenders*. All these measures loiter in their progress, and, with many others not enumerated, will probably be abandoned long before the ensuing month is run out. As already intimated, we cannot suppose that any serious intention is now entertained of meddling, during the present session, with what the Lord Chancellor a few weeks ago described as "that most difficult and complicated subject, the Law relating to *Bankruptcy and Insolvency*."

In stating that a suspension of legislation on legal topics is generally expected and desired, let us not be misunderstood as suggesting any relaxation of the vigilance with which it behoves the profession to



regard the proceedings of the legislature. Sharp practice occasionally prevails in parliament as well as elsewhere. The experience of the last seven years supplies more than one instance in which most important and objectionable enactments have been introduced, towards the close of a session, when the pencils of the parliamentary reporters have been worn short, and the patience and attention of those who devote their attention to legislative measures had become exhausted. We earnestly recommend, therefore, a continuous and unceasing attention to the business of the session until it is actually brought to a close. We anticipate that at no distant period the unaided efforts of individuals in watching the progress of measures in parliament affecting the profession may be transferred to, or at all events shared by, some responsible body in whom the intelligence and influence now scattered, and therefore unavailing, may be concentrated and rendered powerful. It is hoped that the association, to whose establishment and objects we directed attention in a recent number,\* may be made auxiliary to this, as well as to many other useful purposes. Every day's observation proves, how little is to be done in matters of a public nature *without*, and how much *by*, union and organization.

The eve of a general election may not be an inappropriate period to remind our readers, that every man owes something to his profession. It is not necessary to recommend a disruption of political ties, or a disregard of private or local connections; but it is not too much to expect that, in weighing the relative merits of rival candidates, those who have votes to give, or influence to exercise, should consider how far those who look for their support are capable of appreciating, and disposed to promote the redress of professional grievances. So great a disinclination has there been to agitate the questions in which the profession are more especially interested, that it is extremely probable many, who are now members of the legislature, and some who are about to become so, are yet ignorant that solicitors, as such, have any peculiar grounds of complaint. It is extremely desirable that the members of the new House of Commons should be informed on this subject, and if possible, their disposition as regards it inquired into, if not ascertained, before they go to the

hustings. Something may be done in this respect by every individual member of the profession who is canvassed for his vote or influence. If such a course of proceeding were extensively and simultaneously adopted, the result could not fail to be advantageously manifested when the state of the profession comes to be submitted to parliament, which, as we have already intimated, it is intended it should be at an early period.

In conclusion, we shall be excused for adopting and repeating the sentiment so well expressed in the address of the committee of "the Metropolitan and Provincial Law Association," where it is said,—  
"Scattered and divided, the profession has been weak; combined, their power will be, for the accomplishment of every reasonable object, amply sufficient."

## RAILWAY LAW.

### ACTIONS BY ALLOTTEES.

As might have been expected, the earliest and most abundant crop of actions arising out of abortive railway schemes, consisted of those in which persons who supplied goods or labour in furtherance of a railway project, sought to recover compensation from one or more of those who were announced to the world as constituting the managing body. These actions have been attended with results so varied and contradictory, as to throw some degree of discredit on the system, and to suggest some doubts as to the sufficiency of the machinery, by which justice is administered at *nisi prius*.

There is another class of cases, involving principles more complicated, and results not less important, but which have yet come under the consideration of the courts in only a few instances. We allude to those cases in which parties have advanced money, with the view of becoming proprietors in a railway scheme, and seek to recover back their deposits upon the abandonment of the project. We are not aware that, as regards this particular description of cases, there can be said to have been any conflicting decisions; but the facts upon which the reported determinations proceeded are not of a character so universally applicable, as to enable us to state that the law in regard to this class of cases is yet to be considered as settled.

The first decision on this subject was that of *Walstab v. Spottiswoode*, which

\* *Ante*, p. 41.

was decided in Trinity Term, 1846.<sup>b</sup> In that case, the plaintiff deposited her money upon a letter of allotment, by which the provisional committee undertook that the letter, with the bankers' receipt for the deposits, would be exchanged for scrip on its production at the office of the company, and on the execution of the parliamentary contract and subscribers' agreement. The plaintiff made the deposit, and applied at the company's office to have the letter and receipt exchanged for scrip, and to execute the necessary deeds; but she was ultimately informed, that the directors had determined not to issue any scrip, and that the deposits, *minus* the expenses, would be refunded. It appeared, that although there had been applications for as many as 400,000 shares, 70,000 only had been allotted, and the allottees had only paid deposits upon 4,000 shares. Under those circumstances, the plaintiff brought her action against the defendant, as one of the managing committee, to recover back the sum paid by way of deposit, and declared, in the first count of the declaration, for a breach of the special contract to deliver scrip certificates; and secondly, upon the count for money had and received to the plaintiff's use. The defendant pleaded *non-assumpsit*. A verdict was taken for the plaintiff, with leave to move to enter a nonsuit; and a rule having been obtained accordingly, the case was argued in the Court of Exchequer. The court did not give any opinion upon the special count, but decided that the plaintiff was entitled to recover on the count for money had and received, upon the authority of *Nockells v. Crosby* (3 Barn & Cr. 814.) The principle upon which the judgment of the court appears to have proceeded is, that no partnership had actually commenced, and that an application for shares and payment of deposits in a scheme which turns out to be abortive, amounts to nothing, as the allotment is not really a compliance with the application. The deposit, it was said, was paid for the special purposes of a concern which was abandoned, and therefore could not be applied to those purposes; and upon these grounds, the court held that the plaintiff was entitled to have back the whole sum paid by way of deposit, on the count for money had and received.

The facts in *Walstabb v. Spottiswoode*, and the principles upon which it was de-

termined, will be found to be materially distinguishable from those involved in the decision of the Court of Common Pleas, in the more recent case of *Wontner v. Shairp*, in which judgment was pronounced on the last day of Easter Term. In that case, the plaintiff applied on the 25th of September, for thirty shares in a proposed undertaking, called "the Direct London and Exeter Railway Company," in which the intended capital was announced to be three millions, to be raised in 120,000 shares. The thirty shares applied for by the plaintiff were allotted to him, and at his request, the allotment was afterwards increased to sixty shares, and the plaintiff was informed, by a circular from the secretary, that the deposit of 1*l.* 7*s.* 6*d.* per share was to be paid into the company's bankers before the 18th of October. Previous to the day last mentioned, the managing directors caused an advertisement to be inserted in the public newspapers, announcing that the allotment of shares was completed; and on the 21st of October, the plaintiff paid into the company's bankers the sum of 82*l.* 10*s.*, being the deposit on sixty shares; and on the 4th of November, executed the subscription contract, which contained, amongst other things, an authority to the managing directors to defray all reasonable expenses which had been or might thereafter be incurred. Ultimately, it turned out that the managing directors had only allotted 58,000 out of 120,000 shares, and that the money paid by the shareholders by way of deposit was expended, there not being enough to deposit in pursuance of the parliamentary orders. On the 15th of December, the plaintiff attended a meeting of shareholders, at which the number of shares allotted was stated, and a resolution, expressive of confidence in, and approval of, the conduct of the directors, was agreed to by the majority present, but dissented from by the plaintiff. Under those circumstances, the plaintiff sought, in an action for money had and received, and on an account stated, to recover back from the defendant, who was a provisional committeeman, and also one of the committee of management, the sum paid by him as a deposit. The case was argued at great length, upon a rule to enter a nonsuit, or for a new trial, and the court, after taking time to consider, pronounced its judgment in favour of the plaintiff, mainly on the grounds that the application for shares and letter of allotment did not constitute a contract binding on the plaintiff, and that he paid his money upon a

(<sup>b</sup>) Reported Leg. Obs., vol. 32, p. 180.

fraudulent representation. The plaintiff asked for sixty shares in a project which was to have a capital of three millions, raised by 120,000 shares; and the committee professed to allot to him what he asked for, but, in truth, allotted him a different thing—sixty shares in a project in which there were only 58,000 shares allotted by the committee, although applications had been made by solvent parties for the whole number of 120,000 shares. The advertisement stating that the committee “had completed the allotment of shares,” must be taken to be addressed to all who were interested, and, amongst others, to the plaintiff, who had then in his possession the letter allotting him 60 shares. The jury were justified in finding that the statement contained in this letter was a material inducement to the plaintiff to part with his money, and as that statement was not well founded within the knowledge of the directors, it might be considered as a fraudulent misrepresentation. As to the plaintiff’s attendance at the meeting of shareholders, he could not be considered thereby to have waived his right to recover back his deposits, or to have assented to any acts of the directors. The court, therefore, considered that the verdict taken for the plaintiff must stand.

In comparing the two cases particularly referred to, it will be observed, that although in both cases the court held that the plaintiff was not bound by the application for shares followed by the allotment and payment of deposits, in *Walstabb v. Spottiswoode*, this conclusion was arrived at on the ground that the scheme was abortive, and “nothing whatever allotted,” whilst in the case of *Wontner v. Shairp* the same result appears to have been arrived at on the principle, that the allottee had got something different from what he asked, namely, an allotment of shares in a concern with a smaller amount of capital. *Wontner v. Shairp* also differs materially from *Walstabb v. Spottiswoode*, because the plaintiff in the first of these cases had executed the subscription-deed, which expressly authorised the appropriation of the money deposited to the payment of preliminary expenses—a circumstance which the Court of Common Pleas seems to have considered would have amounted to an answer to the action, if there had not been a fraudulent representation, under the influence of which the plaintiff was supposed to have parted with his money and also executed the deed.

There is another case, of *Woolmer v. Toby*, from the Western Circuit, bearing on this question, and which our readers will remember created a considerable sensation at the time it was tried. This case has been argued in the Court of Queen’s Bench, and now stands for judgment. We shall take an early opportunity of calling attention to this judgment when pronounced, as there will then be the deliberate opinion of the three common law courts on questions arising out of actions by allottees.

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

### EXTENSION OF LAW SOCIETIES.

THE committee of management of this association, in their address to the profession,<sup>a</sup> strongly recommend the extension of local law societies in furtherance of the objects of the association. They exhort every solicitor in the kingdom, who is not already a member, to join one of the present societies in his immediate district, and if there be none, to assist in founding a society, in order that the whole profession may ultimately be comprehended in one general association.

Looking over the list of provincial law societies already established, we find there are no less than 16 counties in England, and 10 in Wales, where no law society is now in operation. It may, therefore, be useful to state the names of these counties; the principal places where it may be most advantageous to establish societies; and to point out the neighbouring law societies which doubtless will be ready to assist in the proper constitution of such other societies as may be required.<sup>b</sup> We will first name the *English* counties in their alphabetical order:—

**BEDFORDSHIRE.** The principal towns at one of which a society might be conveniently located, are *Bedford* and *Woburn*. The adjoining societies hold their head quarters at *Northampton*,—Secretary, Mr. George Abbey; at *Cambridge*, Mr. Foster, jun.; and at *Aylesbury*, Mr. Tindal.

**BERKSHIRE.** The principal towns at which a society might be formed in this county are, *Reading* and *Abingdon*. The nearest adjoining societies are those at *Oxford*,—Mr. J. M. Davenport, Secretary; and at *Aylesbury*, Mr. Tindal.

<sup>a</sup> See p. 41 *ante*.

<sup>b</sup> There are law libraries to some extent in different places, whose aid might be rendered available.

**CHESHIRE.** The city of *Chester* and the town of *Birkenhead* are here the principal places. The adjoining societies are at *Liverpool*,—Mr. George Webster, Secretary; and at *Wrexham*, Mr. John Lewis.

**CORNWALL.** The most eligible towns are, *Falmouth* and *Launceston*. The nearest law societies are at *Plymouth* and *Exeter*: of the former, Mr. Pridham is Secretary, of the latter, Mr. Terrell, and of *Devonshire* generally, Mr. Campion of *Exeter*.

**DORSETSHIRE.** Principal towns,—*Dorchester*, *Weymouth*, and *Bridport*. The nearest law societies are at *Exeter*, (as above mentioned); at *Wilton*, of which Mr. John Swayne is Secretary; at *Taunton*, where Mr. Pinchard is the Secretary; and at *Bridgwater*, Mr. Ruddock.

**ESSEX.** Principal places,—*Colchester* and *Chelmsford*. The nearest law societies are at *Cambridge*,—Secretary, Mr. Foster, jun.; at *Bury St. Edmunds*, Mr. James Sparke.

**HAMPSHIRE.** Principal places,—*Winchester*, *Southampton*, and *Portsmouth*. The nearest law societies are held at *Wilton* (*vide supra*) and *Brighton*,—Secretary, Mr. Edward Cornford.

**HEREFORDSHIRE.** Principal town—*Hereford*. Nearest law society at *Gloucester*,—Mr. John Burrup, Secretary.

**HERTFORDSHIRE.** Principal places,—*Hertford* and *St. Albans*. Nearest law society at *Aylesbury* and *London*.

**HUNTINGDONSHIRE.** Principal town,—*Huntingdon*. Nearest law societies at *Northampton* and *Cambridge*, (*vide supra*.)

**LEICESTERSHIRE.** Principal place,—*Leicester*. Nearest law societies at *Birmingham*,—Mr. Thomas S. James, Secretary; *Derby*, Mr. Simpson; *Bilston*, Mr. Willim.

**MONMOUTHSHIRE.** Principal towns,—*Monmouth* and *Newport*. Nearest law society at *Bristol*,—Mr. Washbrough, Secretary; at *Gloucester*, (*vide supra*.)

**NOTTINGHAMSHIRE.** Principal towns,—*Nottingham* and *Newark*. Nearest law societies, *Derby* (*vide supra*) and *Lincoln*,—Secretary, Mr. E. A. Bromehead.

**RUTLANDSHIRE.** Principal town,—*Okeham*. Nearest law society at *Northampton*, (*vide supra*.)

**SHROPSHIRE.** Principal town,—*Shrewsbury*. Nearest law society at *Wolverhampton*,—Secretary, Mr. William Dent.

**WORCESTERSHIRE.** Principal place,—*Worcester*. Nearest law societies at *Birmingham* and *Gloucester* (*vide supra*.)

Proceeding to the *Welch* counties which remain unrepresented, we are unable to refer to any contiguous law societies, for, with the exception of *Denbighshire* and *Flintshire*, there are none in the principality; and the English counties bordering thereon, such as *Chester*, *Salop*, *Hereford*, and *Monmouth*, are equally without legal associations. We can, therefore, only suggest where a "local habitation" might be found.

**ANGLESEY.** Principal town,—*Anglesey*.

**BRECKNOCK.** Principal town,—*Brecon*.

**CARDIGAN.** Principal town,—*Cardigan*.

**CARMARTHEN.** Principal town,—*Carmarthen*.

**CARNARVON.** Principal towns,—*Bangor* and *Carnarvon*.

**GLAMORGAN.** Principal towns,—*Swansea* and *Cardiff*.

**MERIONETHSHIRE.** Principal towns,—*Bala* and *Dolgelly*.

**MONTGOMERY.** Principal towns,—*Welchpool* and *Newtown*.

**PEMBROKE.** Principal towns,—*Pembroke* and *Haverfordwest*.

**RADNOR.** Principal town,—*Presteigne*.

We fear these lists may not be entirely accurate, but believe they are sufficiently so to be of considerable use, and we have ventured to give them immediate publicity because,—looking at the approach of the sessions and assizes, and at the probability of an early general election,—we think there should be no time lost in calling together some influential persons in some or one of the large towns referred to, and taking the matter into consideration. It will be found that in several of these places there formerly existed law societies, which, for want of official activity, ceased to meet, but may be readily revived. Preliminary meetings should take place immediately, and at the next quarter sessions and the ensuing assizes new societies might be regularly established and put in communication with the general association in London.

It may be proper to observe, that in all these counties, where the attorneys and solicitors are unrepresented by any law society, there are several members of the Incorporated Law Society, and, considering the report at the last annual general meeting, (from which we quoted in our last number, p. 69, *ante*.) it is probable those gentlemen would readily assist at a meeting convened for the purpose of forming a new society.<sup>c</sup>

We avail ourselves of the following passages in the address, which well and aptly support the recommendations of the committee regarding the extension of law societies:

"Many advantages will result from this measure. Union will be one, and not the least. It may appear to some to partake of paradox, but it is nevertheless true, that no class of the community has been so supine and inactive in the assertion of their own rights, or permitted more passively aggression and en-

<sup>c</sup> Their names are distinguished in the Law List by an asterisk.

croachment. Scattered and divided, the profession has been weak; combined their power will be, for the accomplishment of every reasonable object, amply sufficient. Another advantage that may be looked for is, the salutary control over all its members which may be attained by means of such an extended association: thus, disputes may be adjusted, rules of practice established, misfeazance prevented, and, what has hitherto been wanting, support and encouragement afforded to the attorney, under circumstances of trial and difficulty, which may sometimes meet him in the fair and honourable discharge of professional duty."

And again it is urged that—

"This important measure, if carried out, will promote fair and honourable practice, an object equally beneficial to the public and to all branches of the profession. To these societies, or to the general association, appeals may be made on disputed points of professional usage; abuses may be examined and rectified, and applications to the superior courts, or to parliament may be concerted."

In thus promoting "fair and honourable practice" amongst attorneys and solicitors, the character and position of that branch of the profession cannot fail to be raised in public estimation. Another, and a not less important, object announced in the address is, the suggested improvement in *legal education*. If the proposal of the committee be carried out, we doubt not that hereafter the position and prospects of the profession will be greatly advanced.

For the present we would earnestly second the proposition of the committee, and join in the exhortation to extend the benefits of professional societies, enlisting the friendly co-operation of practitioners *both in town and country*, and thereby securing, on the one hand, their own honourable station, and on the other, the faithful discharge of professional duty. The mistake hitherto has been to consider the town and country solicitors as having distinct interests. To effect the objects in view the whole of this branch of the profession ought to act in unison.

Knowing how important it is to keep alive the attention of our brethren,—absorbed as they are, for the most part, in their urgent duties to their clients,—we shall endeavour from time to time to enlarge upon the several topics in the address, and add, we hope, some useful information and suggestions for the consideration of the committee and the members generally in working out their important objects. It appears to us that the views stated in the opening address are deeply interesting to

the public, and closely connected with the right administration of justice. We shall, therefore, with the aid of our learned and able contributors, most heartily support the association.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### DRAINAGE OF LAND.

10 VICT. c. 11.

An Act to explain and amend the Act authorizing the Advance of Money for the Improvement of Land by Drainage in Great Britain. [30th March, 1847.]

9 & 10 Vict. c. 101. — *Certain expenses deemed to be included as expenses of works of Drainage.*—Whereas an act was passed in the last session of parliament, intituled "An Act to authorize the Advance of Public Money, to a limited Amount, to promote the Improvement of Land in Great Britain and Ireland by Works of Drainage:" And whereas it is expedient that the said act should be explained and amended: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same,

1. That the expenses hereinafter mentioned shall be deemed to be and may be included among the expenses of works of drainage, in respect of which advances may be made under the provisions of the said act; (that is to say,)

The expense of making or improving and securing from or for the benefit of the land proposed to be improved by Drainage an outfall through other land, or such part, as the commissioners may think reasonable, of the expense of making or improving and securing such outfall, for the benefit of the land in respect of which the advance may be applied for, and of other land:

The expense of making open drains and watercourses, including such open drains and watercourses as may need frequent repair, where reasonable security for their maintenance shall appear to the commissioners to be afforded by the interests or liabilities of the tenants and occupiers of the land:

And the expense of fencing, trenching, and clearing the surface of land to be drained for the purpose of converting the same from waste or pasture into arable or tillage land, where such fencing, trenching, and clearing respectively shall appear to the commissioners to be necessary to secure and render productive the proposed improvement by drainage:

Provided that it shall appear to the commissioners that in all the cases aforesaid the works will effect an improvement in the yearly value

of the land, which will exceed the utmost yearly amount which can be charged thereon under the said act in respect of the advance applied for.

2. *Plans, &c., may be dispensed with in certain cases.*—That where by the said act the plan, estimate, and specification of the proposed drainage is required to be inspected or examined by and to be annexed to the report of the assistant commissioner, or surveyor or engineer, it shall be sufficient for the assistant commissioner, or surveyor or engineer, unless the commissioners shall otherwise direct, to inquire into and to embody in his report such particulars of the land proposed to be drained, and of the proposed or any other manner of effecting the drainage thereof, and of the estimated expenses of such drainage, as shall appear to him necessary and sufficient to enable the commissioners to judge of the expediency of an advance in respect of the proposed works; and where in the provisional certificate, or in any subsequent proceeding, reference is by the said act required to be made to the plan and specification annexed to such report, reference may be made thereto, or to the said report, as circumstances may require; and it shall be lawful for the commissioners to certify their opinion that an advance should be made in respect of any works, notwithstanding any deviation therein from the proposed manner of effecting the drainage, if such deviation shall appear to the commissioners to be expedient, and productive of improvement as permanent and of as great yearly amount as the manner at first proposed.

3. *Applicants for advances may withdraw or reduce the amount of their applications.*—That all parties who shall have made applications for advances under the said act may at any time, before provisional certificates shall have been issued thereon respectively, by writing, addressed to the commissioners, withdraw or reduce the amount of the advances for which their several applications are made; and the commissioners may deal with any application for such reduced advance in the same manner in all respects as if the advance for which such application is made had been originally limited to the amount to which the same shall be so reduced.

4. *Applicants may substitute applications (in respect of other lands) for the applications withdrawn or reduced in amount.*—That any party who shall withdraw an application or reduce the amount of the advance for which his application may have been made, under the provision hereinbefore contained, may at the time of such withdrawal or reduction substitute for the application so withdrawn an application for an advance of the drainage of any of his lands not comprised in his previous application; and if the advance applied for by such substituted application do not exceed the advance for which the application so withdrawn may have been made, or (in the case of such reduction as aforesaid) do not exceed the amount withdrawn by reduction from the advance for which the

previous application may have been made, the commissioners may, in dealing with such substituted application, give the same the benefit (if any) in respect of priority to which they might have deemed it entitled if it had been made at the same time, and instead, in whole or in part, of the previous application: Provided always, that every such substituted application shall, in respect to the notice required to be given by advertisement, and all inquiries and proceedings to be had thereupon, except as aforesaid, be dealt with as an original application.

*Where separate applications have been made by the same owner for several advances, the same may be consolidated.*—That where separate applications shall have been made by the same owner for several advances for the drainage of several lands, or where successive applications shall have been made for an advance, and a further advance for works of drainage on the same lands, it shall be lawful for the commissioners (with the consent of the owner for the time being of such lands or land) by their provisional certificate, or by any other writing under their seal, to declare such several applications to be consolidated and treated as one application, and thenceforth the proceedings and the provisional certificate, and the certificates respectively which shall be had and issued upon such consolidated application, shall be had, framed, and issued respectively in the same manner, and shall have the same force and effect in all respects, as if the aggregate amount of the advances applied for by the several applications had been applied for, and in the case of several lands and works as if such several lands and works had been all mentioned and included in one application: Provided always, that where such separate applications as aforesaid shall have been made for advances for the drainage of several lands, such applications shall not be consolidated without the like notice by advertisement of the proposed consolidation as by the said recited act is required in respect of an application for an advance; and where such notice by advertisement shall be given, any person who would have been authorised to dissent from an application for an aggregate advance in respect of the lands comprised in such several applications may dissent from such proposed consolidation, and the provisions of the said recited act in relation to dissents shall be applicable to dissents from a proposed consolidation.

6. *Advances may be made on account in certain cases.*—That where a provisional certificate has been or shall have been issued under the said act, it shall be lawful for the commissioners, whether a declaration shall or shall not have been inserted in the provisional certificate for this purpose, to certify to the Commissioners of the Treasury that an advance on account should be made in respect of any part of the proposed works which shall not have been actually executed, not exceeding in amount the whole of the sum then actually expended thereon, in case it shall be shown to the satis-

faction of the commissioners that the part so executed will, independently of the part remaining unexecuted, be durable and effectual, and produce an improvement in the yearly value of the land exceeding the amount of the yearly charge which can be made under the said act in respect of such advance.

7. *Time for completion of works.*—That no provisional certificate shall be issued under the said act unless it shall be shown to the satisfaction of the commissioners, or security be given to their satisfaction by the party applying for the advance, that the works for which the advance is to be made may be completed within five years from the date of the certificate; and the commissioners shall annex to every provisional certificate to be issued under the authority of the said act a provision that all works in respect of which they shall certify their opinion that an advance should be made shall be completed within five years as aforesaid, and no provisional certificate shall be issued upon any application or applications by the same owner for any larger sum than ten thousand pounds: Provided always, that in case it shall be shown to the satisfaction of the commissioners, or security be given to their satisfaction by the party applying for the advance, that the works for which the advance is to be made may be completed within three years from the date of the certificate, and that it shall also appear to the satisfaction of the commissioners that such works are to be executed within any district in Scotland in which distress prevails, and that such works may be executed by the labour of the inhabitants of such district, it shall and may be lawful for the said commissioners in such case, on the application of any owner, and with the sanction of the Commissioners of her Majesty's Treasury, to issue a provisional certificate or provisional certificates for such larger sum or sums as they in their discretion shall see fit, subject to a provision to be annexed to such last-mentioned certificate that such works shall be completed within the said period of three years.

*Form of certificates, and their effect.*—

That certificates and provisional certificates under the said act may respectively be made in such form as the commissioners shall think fit; and every such certificate and provisional certificate respectively, when sealed with the seal of the commissioners, shall for all purposes be conclusive evidence that all the applications and acts whatsoever which ought to have been made and done previously to the issuing thereof have been made and done by the persons authorized to make and do the same, and that an advance may be issued by virtue of such certificate, and that the land shall become charged in respect of such advance; and no such certificate or provisional certificate shall be impeached by reason of any omission or mistake therein.

9. *Provisional certificate may be assigned.*—

That any owner of land to whom a provisional certificate shall have been issued under the said act, or any subsequent owner of such land, may assign such provisional certificate, by way of

security, to any person who may have advanced or may agree to advance monies for the execution of the works therein mentioned, and such assignment may be made by an endorsement on the provisional certificate in the form set forth in the schedule to this act; and such assignee shall be entitled to claim and receive, upon and in respect of such provisional certificate, such advances as the owner by whom the assignment shall have been made might have claimed and received in case such assignment had not been made, subject nevertheless to the right of the owner as against such assignee to an account of the advances so received, or of so much thereof as shall not be owing on his security; and, subject to the rights of assignees as aforesaid, each advance shall be made to the owner by whom the works in respect of which an advance may be made shall appear to the commissioners to have been executed, and who shall have been named in the certificate accordingly, or to the legal personal representative of such owner; and where an aggregate advance shall be made in respect of works which shall have been in part executed by an owner whose ownership shall have ceased, and in part by a subsequent owner, the advance shall be apportioned by the commissioners between the owners in such manner as by the report of a surveyor or assistant commissioner, or otherwise, shall appear to the commissioners to be reasonable, having regard to the sums expended by the successive owners, and such successive owners may be named in the certificate accordingly.

10. *As to the words "owner of lands."*—That the words "owner of lands" shall, as to lands in Scotland, include any corporation.

11. *This act to be deemed part of the recited act.*—That this act and the recited act shall be construed together as one act, and the provisions herein contained shall be deemed to extend to all proceedings and matters already taken and done in the same manner as if such provisions had been originally inserted in the said recited act.

12. That this act may be amended or repealed by any act to be passed in this session of parliament.

SCHEDULES TO WHICH THIS ACT REFERS.

*Form of Assignment of Provisional Certificate.*

I A. B. of \_\_\_\_\_ in consideration of the sum of \_\_\_\_\_ pounds paid to me [or of the advances which may be made to me] by C. D., do hereby assign to the said C. D. the within written provisional certificate, and all my right and interest in and to the advances which may be made in virtue thereof, to the intent that the said C. D., his executors, administrators, or assigns, may claim and receive such advances, and may thereout retain the said sum of \_\_\_\_\_ with interest for the same at \_\_\_\_\_ per centum per annum [or such sums as may be advanced to me by the said C. D. as aforesaid, with interest at \_\_\_\_\_ per centum



per annum from the time of the respective advances thereof.]

In witness whereof I have hereunto set my hand, this                      day of                      18 .

## LAW OF ATTORNEYS.

### DEFECTIVE BILL OF COSTS.—NAME OF COURT IN WHICH BUSINESS DONE.

WE beg to call the attention of our readers to the case of *Ivimey v. Marks*, reported in this number, (p. 107, *post*.) by which it is decided, that

“Where an attorney’s bill contains charges for business done in the Court of Chancery and also in a common law court, it should mention each court in which such business was done. Therefore, where a bill stated that some of the charges were for business done in the Court of Chancery, and it did not appear in what court the other business was done, except that the items showed that it must have been in one of the superior common law courts. *Held*, insufficient, under the 6 & 7 Vict. c. 73.”

This decision requires the especial attention of attorneys and solicitors. If it be well-founded, the act of 6 & 7 Vict. c. 73, will require amendment. No doubt, an attorney ought to deliver a bill of costs in all respects in an accurate form. So ought a surgeon or apothecary or a tradesman. But, whilst it may be proper that an attorney should not be allowed to recover for such part of his bill as may not be properly stated, either, as in this case, from the omission of the name of one of the courts in which part of the business was done, or for other defects—we cannot understand the justice of nonsuiting him for the whole. The client should be required to make his objection by plea, if it turn on the form of the bill, and there should be power to amend on payment of costs: or, the client should take out a summons requiring the attorney to amend his bill according to the practice of amending particulars of demand. There seems to be a failure of justice.

## JURISDICTION OF THE ECCLESIASTICAL COURTS.

THERE appears but little doubt that the courts at Doctors’ Commons will be remodelled consistently with the reforms which are taking place in all the ancient courts of the realm. The difficulty will be here, as it was in the Court of Chancery, to make due arrangements for abolished

offices: doing, on the one hand, what may be just, (aye and liberal,) towards *vested interests*, on the one hand, and on the other, what may be due to the public and the right administration of justice.

As an indication of “coming events” promoted by a potent body, *the Dissenters*, we give the following petition to the House of Commons, printed in the votes and proceedings of the 6th May. It comes from the officers and members of “the Society for the Abolition of Ecclesiastical Courts,” and states—

“That ecclesiastical laws and courts in this country had their origin in the authority and influence of Roman Pontiffs, whose power they were designed to consolidate and retain. That this separate and, in many respects, independent branch of jurisprudence has produced very many national evils, which induced the legislature, at the commencement of the Reformation, to pronounce the constitutional laws of ecclesiastical courts, “much prejudicial to the Prerogatives Royal, repugnant to the laws and statutes of this realm, and overmuch onerous to the subjects;” but that, notwithstanding this condemnation, and the efforts made by parliament, in the reigns of Edward the Sixth and Elizabeth, for their abolition, they remain to this day essentially unchanged.

“That these courts are, by charter of William the Conqueror, declared to be “for the government of souls,” under which designation they claim and execute a jurisdiction over matters in which the social, moral, and religious interests of every member of the State are involved; and that unrepealed statutes define or declare this jurisdiction (embracing, as it does, the laity) to be such as, in the judgment of your petitioners, is alien to the proper authority of any human tribunal, derogatory to the body of persons thus armed with the means of persecution, opposed to the free spirit of our national institutions, and utterly at variance with the pure and beneficent principles of the Christian religion.

“That a royal commission was appointed in 1830, ‘to make full inquiry into the practice and other things connected with ecclesiastical courts, and further to inquire into the jurisdiction of such courts, and whether such jurisdiction may be conveniently and beneficially taken away or altered.’ That this commission made their report in 1832, but that no legislative remedy for the bulk of the grievances it reported to exist has yet been provided.

“That ecclesiastical courts, though professedly spiritual, do yet exercise jurisdiction in several matters exclusively civil, and especially the administration of testamentary and matrimonial laws, than which there is no department of jurisprudence of more vital and daily importance to every class of the community, but which the royal commissioners report, ‘it is impracticable to have efficiently administered in diocesan courts’



"That the evils arising out of their testamentary jurisdiction are manifold, and of grave national importance, among which your petitioners include:—

The usurpation of civil power by spiritual persons; the royal commission admitting that these courts 'in administering testamentary law, exercise a jurisdiction purely civil, and in name only ecclesiastical.'

The want of safe and convenient registries for wills, the present depositories in cathedrals or rooms, the private property of ecclesiastical persons or corporations, being in nearly all instances unsafe and inconvenient.

The danger of titles to real and personal property being destroyed, wills having by the testimony of officers in these courts, 'been lost or clandestinely removed;' and the ecclesiastical authorities who have charge of these important national records having refused, in some instances, to provide, even at a moderate expense, and at the earnest entreaty of their own officers, suitable and safe depositories for them.

The absence of any direct and efficient powers for enforcing the payment of legacies, and distribution of intestates' effects, the courts of equity not having any original jurisdiction in testamentary matters, but being bound to adopt in questions of legacy the rules which obtain in the ecclesiastical courts, while those latter courts can do nothing more than require the exhibition of an inventory of the deceased's effects, in order to enable parties to prosecute their rights before another and a civil tribunal.

The prerogative of the Archbishop of Canterbury, who, to sustain his spiritual superiority, is possessed of the exclusive right of granting probate, or administration in all cases where the deceased has left five pounds personal property in two places, having separate ecclesiastical jurisdiction; a prerogative which often compels persons to take out a second probate or administration, the first, when taken out in a wrong court, being legally void, by which means, serious wrong, inconvenience, and loss are frequently inflicted, and gross injustice is practised.

The necessity of applying to different tribunals, to try one and the same will, according as it disposes of real or personal estate, so that in the ecclesiastical court the maker of a will has been declared insane in disposing of his goods, the same instrument in the civil court being pronounced the act of a sane testator, as regards his land.

The anomaly by which a will devising land is regarded legally complete in itself, but is held insufficient when disposing of personal property, until it has received by grant of probate the sanction of the church, a distinction repeatedly, by the highest legal authorities, declared an absurdity and a judicial wrong.

The aggravation of these evils by the fact, that the ecclesiastical courts not having the power in any testamentary suit to enforce

their own decrees, persons are compelled to do that in several courts which they ought to be able to do in one suit, and in one court, which not being possible, while these ecclesiastical courts exist, great reproach and discredit are cast upon the wisdom and equity of English jurisprudence.

"That the matrimonial jurisdiction exercised by ecclesiastical courts occasions serious national mischiefs, as the variety of courts encourage litigant parties to institute a great number of appeals; which an experienced officer in these courts declared to be 'a greater evil than is found in the whole practice of the law.' Your petitioners believe that if this jurisdiction were taken away from the ecclesiastical and placed under the common law courts, considerable progress would be made towards obtaining such other legislative remedies as would prevent the discordance between the English and the Scotch laws of marriage, by which an heir deemed legitimate in Scotland has been pronounced illegitimate in England.

"That the mixed jurisdiction of the ecclesiastical courts, relating to causes partly civil, and partly spiritual, is also a negative grievance. Among the evils which your petitioners would enumerate are suits for defamation, which have led to the imprisonment of many persons for the non-payment of costs.

Suits for tithes, and other ecclesiastical demands, that were originally free gifts; included in which are Easter offerings, mortuaries, oblations, and church rates, which have long been a fruitful source of parochial strife, and which inflict serious wrong upon many British subjects.

Suits for compelling persons to become churchwardens, which, though the office of churchwarden is annual, involve parties in litigation which may stretch over several years.

Suits for brawling and chiding in churches and churchyards.

And, suits for laying violent hands on the clergy, by which an ancient distinction is retained between the civil rights of the clergy and laymen.

"That these courts supply archbishops, bishops, and other persons with abundant opportunities of providing their family relations with lucrative and sinecure offices, paid by fees exacted from the public for probates, marriage licenses, and other charges, the greater part of which fees are obtained by their own authority, and augmented or varied at pleasure.

"That the power possessed by archbishops and bishops to appoint the judges, advocates, and proctors in these courts, and, at their pleasure to remove them, places judicial persons in a state of dependance derogatory to the authority of a court of law, gives to the church a power not now possessed by the crown, and enables ecclesiastical persons to exert an influence unknown to the constitution in analogous cases.

"That the absence of trial by jury, the secret mode of taking evidence, and the number of clerical judges, and judge surrogates, combine with other causes to render spiritual courts objects of a deeply-seated and long-entertained national dislike.

"That the practice of the ecclesiastical courts is restricted to such persons as the archbishop or bishop may choose to select, and as swear, at the time of admission, that they believe the thirty-nine Articles, and will yield obedience to their diocesan, by which means Protestant dissenters, Roman Catholics, and others, are excluded as practitioners,—an invidious and hurtful exclusion, which not only practically frustrates the intention of the legislature, when it abolished religious tests as qualifications for offices of trust or honour, but denies to British subjects the right of availing themselves of the legal talents of the whole English bar.

"That the system of ecclesiastical jurisprudence of which your petitioners complain, becomes still more injurious to the public good through the existence of the courts called 'The Peculiars.' That of these there are nearly three hundred; many of them have their jurisdiction confined to single parishes,—some have the extent of their jurisdiction a subject of dispute,—more than seventy are now in lay hands,—while a very considerable number pertain to deans, prebends, rectors, or vicars,—and many of them possess and exercise the powers of the superior ecclesiastical courts; and all of them give rise to such evils, that the royal commissioners suggested their entire abolition, 'as they were not aware of any one benefit which could result from their continuance.'

"That your petitioners would respectfully express to your honourable house their emphatic conviction that the ecclesiastical laws, as administered in ecclesiastical courts, are essentially opposed to the full and equal enjoyment of the rational rights of religious liberty. That the law now recognises the equal rights of all persons, of whatever religious persuasion, to act upon their own convictions of truth and obligation without damage or molestation; but, notwithstanding this, that the ecclesiastical courts still assume that every person in the state belongs to, and is bound to adhere to one creed and one system of religious ordinances, and that they are clothed with powers to punish all persons who do not conform to one religious standard. Your petitioners respectfully say that, for the state to allow its supreme authority to be thus employed by spiritual persons, is derogatory to the authority of the civil government, detrimental to the interests of religion, and a moral wrong."

The petitioners therefore pray that all interference of ecclesiastical courts with *secular* matters may be entirely abolished; that the civil jurisdiction they now exercise may be transferred to, and exercised by,

*courts under the direct authority of the crown; and that their powers, which in any way interfere with the free exercise of the rights of conscience, may be wholly abrogated.*

## SELECTIONS FROM CORRESPONDENCE.

### THE NEW COUNTY COURTS.

*To the Editor of the Legal Observer.*

SIR,—Being a regular subscriber to your work, I have observed your judicious remarks upon the New Small Debts Act and Rules, but I think you have not noticed rule 16, which appears to me likely to prove *very oppressive* upon the suitors. That rule, coupled with the 16th, only gives the plaintiff *two days* to serve the required notices, if he elects to accept the money paid into court. Now, here is a district extending 12 miles northward and 12 miles westwards of the place where the court is held, and where the clerk resides, and I have a client living at one extreme point likely to sue parties at the other end of the district; how is he to serve the notice upon the defendant except by special messenger, at a great extra expense? Again, the notice of payment into court is, by the 82nd sect. of the act, to be sent by the clerk to the plaintiff by post or messenger; most probably he will send it by post if the plaintiff resides 12 miles from his office; then follows the chance that plaintiff may be from home, and his letters remain unopened until his return, or he may be a small tradesman in a country place where there is no post, and he only receives his letters once a week when he goes to the market town, and in either case he has to pay the costs of the defendant's appearing, although perfectly ignorant of what has taken place.

A SUBSCRIBER.

### SMALL DEBTS ACT.

Before the passing of the act, *A. sues B.* in the superior courts for a debt under 20*l.* *B.* allows judgment to go by default, *a. fi. fa.* is issued for the debt and costs, but nothing is found whereon to levy, (the judgment was not obtained till after the passing of the act). Can *A.* cite *B.* to the new courts for the judgment debt, (which includes the costs,) as well also those costs incidental to the levying?

E. H.

### ATTORNEYS' CERTIFICATE DUTY.

*To the Editor of the Legal Observer.*

SIR,—Allow me to suggest, through your widely circulated periodical, to those members of the profession who are interested in the abolition of this unjust tax, that they should endeavour to obtain a promise from the candidates at the approaching general election, to support a repeal of it, in the event of their return to

parliament. I need not, sir, remind you of the influence of the provincial practitioners in almost every borough, as well as in many of the counties; and that if they would exert themselves success would be certain to follow.

A SUBSCRIBER.

#### APPOINTMENT OF NEW TRUSTEES.

A correspondent, referring to the number for 3rd April, sends the following form of power, which he contends meets the objections of our former correspondent, and is more concise than the form he gave.

"And I hereby direct and declare that in case any trustee or trustees for the time being of this my will shall die, or refuse or become by absence abroad or otherwise unfit to act in the trusts thereof, then and so often as the same shall happen, it shall be lawful for the surviving, continuing, retiring, or other trustees or trustee for the time being, by deed, to appoint any other person or persons to be a trustee or trustees in the stead of the trustee or trustees so dying, refusing, or becoming unfit to act as aforesaid, and all the trust premises shall thereupon be transferred accordingly."

#### REGISTRY OF DREDS.

There is much talk again in the legal world of having a general registry, but I think this session of parliament will pass over without such a burden being entailed upon the country. I must confess that such an act, if passed, would add greatly to the profit of the legal profession, to which, looking at recent measures, there could be no objection. But then the client derives no benefit from such a burden, and the solicitor a responsibility almost unequalled.

I have felt this in a personal manner very much of late, having had to search the Middlesex Registry and the Common Pleas Judgment Office, in two or three different cases, and I see no other course open to the solicitor than to search under the name of *every person* who has held the premises during the last *twenty years*. You cannot rely that your vendor had searched only five years previously, for he might have overlooked an incumbrance duly registered of prior date, or he may *not* have searched at all. The same will hold good as to judgments in the Common Pleas: we must search properly against every person who has held the premises during the last twenty years; for if *A.* held the land twenty years ago, and had a judgment duly entered against him, and re-registered down to the present time every five years, *B.* afterwards bought from *A.* without searching, and there have been innumerable sales since, searching always against the last vendor, as is the usual custom, *A.'s* judgment would still remain a charge upon the premises in the hands of *T.*

After I had completed my search, I could only say, that I was not at all satisfied that I might not have overlooked some incumbrance or judgment which might in equity affect the estate, and so incurring a responsibility for

which any charge I could make was quite unequal. Many respectable men in the profession are considerably at sea in this matter.

A CONSTANT READER.

#### APPLICATIONS FOR TAKING OUT AND RENEWAL OF CERTIFICATES,

*On the last day of Trinity Term, 1847.*

##### Queen's Bench.

Ascroft, William, Oldham.  
Bell, Edward, Stafford.  
Carter, Frederick Roger, Exeter.  
Dalton, George Wilkinson, 5, Duke Street, St. James's; Candover; and Berwick-upon-Tweed.  
Garratt, Joseph, Cambridge.  
Gray, William, 13, Martha Street, Cambridge Heath.  
Lindsay, Richard Fydell, 33, Tavistock Place; Westdean; 18, Judd Place; and 29, Claremont Street, Pentonville.  
Marshall, William, Birmingham.  
Owen, Henry Hugh, 46, Upper John Street, Fitzroy Square.  
Parkin, George Lewis, 45, Eastbourne Terrace, Paddington; and Regent's Square.  
Whicher, William, Chichester.  
Werninck, Henry Hope, Brussels.  
Windsor, Other, St. Anne's Terrace, St. John's Wood.  
Wilson, Thomas, Hatlex, near Lancaster; and Lancaster.

*Applications at Judge's Chambers for day after Trinity Term, 1847, for taking out and renewal of Certificates.*

Aldham, George, 4, St. George Terrace, Islington.  
Buck, Charles, Wellington.  
Dawbarn, Robert, jun., Norwich; and Alfred Street, Bedford Square.  
Higginbottom, William Henry, Manchester; and Ashton-under-Lyne.  
Moore, Frederick Harry, Blandford Forum.  
Myers, John, Manchester.  
Parrott, William, 10, Staple Inn; Greenwich; 42, Ebury Street, Pimlico.  
Swift, William B., Lewisham; 2, Golden Square; 8, Temple Place, New Cross.  
Smith, Edwin Augustus, Blandford Forum.  
Thornthwaite, William, 30, Gordon Street, Gordon Square.  
Wilks, John, Birstal; Douglas; Ramsay; Kircudbright; Dewsbury.  
Wood, Frederick John, Brown's Terrace, Canonbury.

*Applications to Judge at Chambers for taking out and renewing Certificates, pursuant to Judges' orders.*

Garnham, Richard Enoch, 33, Gower Place, Euston Square.  
Garnett, Philip Frederic, Radley's Hotel, Bridge Street; and Demerara.  
Oxley, George, Rotheram; and Brightside.  
Sill, Richard, Laurel Cottage, Lyon's Hall, Kington (Herefordshire).

**ANALYTICAL DIGEST OF CASES,  
REPORTED IN ALL THE COURTS.**

**Courts of Equity.**

**CONSTRUCTION OF STATUTES.**

[ALTHOUGH the present is a short section of the Digest, we think it preferable to give it insertion in this shape, as distinguished from other classes of decisions in the courts of equity.]

**AWARD.**

**Jurisdiction.**—*Construction of 9 & 10 W. 3, c. 15.*—The Court of Chancery is one of the "Courts of Record" to which the statute 9 & 10 W. 3, c. 15, gives summary jurisdiction for the enforcement of awards. The statute excludes every jurisdiction to interfere with the execution of awards made under it, except the summary jurisdiction expressly given by it. And a bill will not lie to impeach an award made under the statute whether the submission under which it was made has or has not been made a rule or order of court before bill filed. *Heming v. Swinnerton*, 2 Phill. 79.

Cases cited in the judgment: *Nicholls v. Roe*, 5 Sim. 156; *Joseph and Webster*, in re, 1 R. & M. 496;

**BANKRUPT.**

See *Insolvent Debtor: Interpleader.*

**CONTEMPT.**

1 W. 4, c. 36.—*Reference as to poverty.*—*Pro confesso.*—A party moving for his discharge, under the 13th rule of the 1 W. 4, c. 36, may be at the same time remanded under the 12th rule.

Whether, pending a reference as to the poverty of the defendant, time runs against the plaintiff for taking the bill *pro confesso*? *Semle not. Potts v. Whitmore*, 8 Beav. 317.

**CORPORATIONS.**

5 & 6 W. 4, c. 76.—The proper style of municipal corporations in cities is, the "mayor, aldermen, and citizens," and not the "mayor, aldermen, and burgesses," of the city.

Leave given to amend the title of an answer, although the application was opposed by the plaintiff. *Attorney-General v. Worcester, Corporation of*, 2 Phill. 3.

**EXCHEQUER, EQUITY.**

See *Jurisdiction.*

**INFANT.**

See *Trustee.*

**INSOLVENT DEBTOR.**

5 & 6 Vict. c. 116.—*Release by assignee.*—*Bill for redemption.*—The plaintiff filed his petition in the Court of Bankruptcy, under the provisions of the act 5 & 6 Vict. c. 116, for the relief of insolvent debtors not owing more than 300*l.*, and passed his examination, and obtained his interim and final orders for protec-

tion. He then filed an affidavit in the Court of Bankruptcy, stating that he had satisfied, and obtained a discharge from, all the creditors named in his schedule; and that he had notified such satisfaction and discharge by public advertisement. The plaintiff then applied to the official assignee for a release of his estate, which, according to the provisions of the act, vested in such assignee on the prosecution of the petition; but in the absence of any proviso in the act for determining the duties of the official assignee in such a case, the plaintiff was unable to obtain any release or re-conveyance. The plaintiff then filed his bill against the defendant, as mortgagee, for the redemption of an estate which had been mortgaged before he presented his petition to the Court of Bankruptcy. Upon the objection of the defendant, that the estate of the plaintiff (if any) was vested in the official assignee: *Held*, that in the absence of any statutory jurisdiction on the subject in the Court of Bankruptcy, and upon the submission of the assignee, the plaintiff was entitled to sustain the suit at the hearing. Whether, if the defendant had demurred, the bill would have been sustained—*quære.* *Preston v. Wilson*, 5 Hare, 185.

Cases cited in the judgment: *Tarleton v. Hornby*, 1 Y. & C. 172; *Thompson v. Denham*, 1 Hare, 358; *Major v. Auckland*, 3 Hare, 77; *Ex parte Newlands*, 1 De Gex, 150.

**INSURANCE, POLICY OF.**

See *Interpleader.*

**INTERPLEADER.**

*Policy of insurance.*—A life insurance company received notice of an assignment, by an insurer of a policy which the company had granted, and the insurer afterwards became bankrupt. Soon after the death of the person whose life was assured, the party to whom the assignment had been made applied for the payment of the sum due upon the policy, and the company inquired of the assignees of the bankrupt whether there was any objection to payment being made to the claimant. The assignees did not assent to the payment, but made no positive claim to the policy. In the meantime an action was brought upon the policy by the claimant, in the name of the bankrupt against the company: *Held*, that it was a case in which the company were entitled to file their bill of interpleader against the plaintiff in the action, the bankrupt, and his assignees; and that the assignees who had in the suit shown no title to the policy, must pay the costs. *Fenn v. Edmonds*, 5 Hare, 314.

**JURISDICTION.**

*Exchequer.*—*Prerogative.*—5 Vict. c. 5.—The whole equity jurisdiction of the Court of Exchequer, including that relating to the revenue, was transferred to this court by the 5 Vict. c. 5, s. 1.

The crown might, before the abolition of the Equity Exchequer, have proceeded on the equity side in respect of a legal right, and may

now proceed in the same way in chancery. *Attorney General v. Corporation of London*, 8 Beav. 270.

Cases cited in the judgment: *Attorney-general of the Prince of Wales, v. Sir J. St. Aubyn*, Wightwick, 167.

And see *Award*.

#### LAND CLAUSES CONSOLIDATION.

*Entry on land for surveying, setting out line, &c.* — *Notice.* — *Injunction.* — 8 Vict. c. 18. — A railway company having power to purchase a plot of land for their railway, entered upon the same to survey and take levels thereof, and probe or bore to ascertain the nature of the soil, and set out the centre line of the railway, and for that purpose they dug a trig line or trench 2 inches deep and 14 inches wide across the plot of land, but they gave the owners of the land no previous notice of such entry as required by the 84th section of the Lands' Clauses Consolidation Act, (8 Vict. c. 18). Five days after the trig line was made, the owner of the land discovered the fact, and 9 days from such discovery he filed his bill for an injunction. Upon the affidavits on the part of the company that the surveying and setting out of the line of railway was completed on the day the trig line was made, and that they had no occasion to enter, and did not intend again to enter upon the land until they had taken the legal steps for permanently using it; the court refused the injunction, but reserved the costs. *Fooks v. Wilts, Somerset, and Weymouth Railway Company*, 5 Hare, 199.

#### LIMITATIONS, STATUTE OF.

1. *Equitable waste.* — *Acquiescence.* — *Release.* — *Length of time.* — The statutory rule which gives to a remainder-man 20 years from the time when his title accrues in possession for bringing an action or suit for the property, applies to a claim for compensation for equitable waste, as well as to a claim to the land itself. And therefore an account of equitable waste was decreed against the estate of the tenant for life 38 years after the waste was committed, the title of the plaintiff, as remainder-man in tail, having accrued within 20 years before the filing of the bill.

Upon a claim to compensation for equitable waste, the court does not consider whether the act complained of was, or was not, a sound exercise of discretion with reference to the state of the property, and to the interests of the family to which it belongs, for a tenant for life has no right to alter the nature of property belonging to another person.

Distinction between acquiescence and the release of a right. *Duke of Leeds v. Earl of Amherst*, 2 Phill. 117.

Cases cited in the judgment: *Bennett v. Colley*, 2 Myl. & K. 225; *Kemp v. Westbrook*, 1 Ves. sen. 278.

2. *Mortgage.* — *Quere*, whether, since the late Statute of Limitations (3 & 4 W. 4, c. 27, s. 28), the

bar created by 20 years' possession by a mortgagee, is defeated by his having kept accounts of the rents received by him. *Baker v. Wetton*, 14 Sim. 426.

#### MORTGAGE.

*Purchaser within 27 Eliz. c. 4.* — An equitable mortgage by deposit of title-deeds, with an agreement in writing by the party making the deposit, to execute a formal mortgage of the property to the mortgagee for the balance which might be due to him, constitutes the equitable mortgagee a purchaser for good consideration within the statute 27 Eliz. c. 4, in respect of such balance; and, it being a term of the agreement that the mortgage to be executed should contain a power of sale, the court, on a bill to set aside a prior voluntary conveyance by the mortgagor, as fraudulent and void, under the statute 27 Eliz. c. 4, decreed, that, on default of payment, the mortgaged property should be sold.

*Quere*, whether after the bankruptcy or insolvency of a debtor, any creditor (other than the assignees) can, in ordinary cases, sustain a suit to set aside a conveyance made by the debtor prior to the bankruptcy or insolvency, on the ground that such conveyance is fraudulent, within the statute 13 Eliz. c. 5; or whether it is necessary that any creditor seeking to set aside such fraudulent conveyance must previously recover judgment at law for his debt. *Lister v. Turner*, 5 Hare, 281.

Cases cited in the judgment: *Buckle v. Mitchell*, 18 Ves. 100; *Colman v. Croker*, 1 Ves. jun. 161.

See *Limitations, Statute of*.

#### MUNICIPAL CORPORATIONS.

See *Corporation*.

#### PAUPER.

See *Contempt*.

#### PROBATE DUTY.

*Conversion.* — *Realty and personally.* — *Double operation of probate.* — As to the right of the crown to probate duty on realty of a deceased party impressed, in equity, with the character of personality.

J. S. conveyed fee simple estates, upon trust, by sale, &c., to pay certain debts, and the residue to himself, his executors, administrators, and assigns, without any equity thereon in favour of his heirs or real representatives, notwithstanding the estate might remain unconverted at the time of his death. The estate was sold after his death: *Held*, that no part of the produce was liable to probate duty.

Operation of a probate in evidencing the will and authenticating the title of the executor to property not comprised within the grant of administration. *Matson v. Swift*, 8 Beav. 368.

#### PRO CONFESSO.

See *Contempt*.

#### RELEASE BY ASSIGNEE.

See *Insolvent Debtor*.

#### TRUSTEE.

1. *Infant.* — Under the 1 W. 4, c. 60, the

Master has no power to appoint a person to convey. It is for the Master to "approve," and for the court to "appoint." *Fowler v. Ward*, 8 Beav. 488.

2. 1 W. 4, c. 47.—*Infant*.—The 12th section of the 1 W. 4, c. 47, does not apply to a case where an estate is devised to a trustee during the life of a *cestui que trust*, with remainders over; and by the disclaimer of the trustee, the legal estate descends on the heir.

A conveyance by an infant, under the 11th section of 1 W. 4, c. 47, passes only such interest as the infant, if of full age, might pass. *Heming v. Archer*, 8 Beav. 294.

#### WASTE.

See *Limitations, Statute of*.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Lord Chancellor.

*Chappell v. Purday*. March 20th & 26th, and April 1st.

COSTS OF BILL FOR INJUNCTION WHERE PLAINTIFF'S TITLE FAILS AT LAW.—APPEAL FOR COSTS ONLY.

*This court has no jurisdiction to mulct the defendant in his costs of an injunction suit, upon the grounds of a vexatious and expensive defence of the action at law, wherein the plaintiff failed to show a title to the subject-matter of the bill.*

*An appeal for costs only will be entertained whenever a principle is involved, or the practice of the court requires to be defined, or a particular estate or fund has been charged with them, or they have been refused, contrary to the usual practice, as in a bill for discovery, &c.*

Mr. Anderdon and Mr. J. W. Smith stated, that this was an appeal by the defendant from Vice-Chancellor Wigram, who had dismissed the plaintiff's bill *without costs*. The plaintiff claiming to be entitled to a certain copyright, filed the bill to prevent the defendant from using the same for his own benefit. Various proceedings took place in the course of the suit, and ultimately the bill was retained for a year, with liberty for the plaintiff to try at law her alleged title to the copyright in question, otherwise the bill to be dismissed *with costs*. An action was accordingly brought, when a verdict was given for the plaintiff, which was afterwards entered for the defendant, (see 14 Mees & Wels. 303.) The plaintiff's right being thus negatived his Honour subsequently dismissed the bill but *without costs*, and expressed an opinion that the defendant was not entitled to his costs, as he had entailed unnecessary expense upon the plaintiff by a defence in certain portions of which he had failed. The learned counsel submitted, first, that under the

circumstances, the bill ought to have been dismissed *with costs*; and secondly, that the appeal involved the principle of giving costs, and would therefore lie. Upon the first point they cited *Turner v. Turner*, 2 P. Wms. 297; *Meyrick v. Whishaw*, 4 Madd. 272; *Baily v. Taylor*, 1 Russ. & Myl. 73; *Bacon v. Spottiswoode*, *Bacon v. Jones*, 1 Beav. 382; *Millington v. Fox*, 3 Myl. & Cr. 338; and *Peachy v. Somerset*, 1 Strange, 447; (the passage apposite to this question will be found at page 455.) Upon the second point they cited *Owen v. Griffith*, Ambler 520, and 1 Ves. sen. 249; *Cowper v. Scott*, 1 Eden, 17 (mentioned in *Wirdman v. Kent*, 1 Bro. C. C., p. 141, n., Blunt's ed., where most of the early cases on this point are collected); *Burkett v. Spray*, 1 Russ. & Myl. 113; *Taylor v. Southgate*, *Eyre v. Marsden*, and *Angell v. Davis*, 4 Myl. & Cr., pp. 203, 231, 360; *Tod v. Tod*, 1 Bligh, 638, N. S.

Reference was also made during the argument to *Maquire v. Maddin*, 2 Bro. P. C. 393; *Calcraft v. West*, 2 Jones & Lat. 123; *Marquis of Waterford v. Knight*, 3 & 11 Cl. & Fin., pp. 270 & 653; and *Sheehy v. Muskerry*, 7 Cl. & Fin. 1.

Mr. Rolt and Mr. Chandless argued contra, and Mr. Anderdon replied.

The Lord Chancellor, after briefly stating the facts and proceedings, said, that where a plaintiff who claims relief in this court on the grounds of a legal title fails in establishing such title, it is a matter of course that the bill should be dismissed with costs. The first decree of his Honour was, therefore, quite correct, but the second was inconsistent with it, and therefore they could not stand together. With respect to the defence to the action, the courts of law were competent to visit upon the defendant any impropriety in conducting the trial with unnecessary expense, and the costs there would not affect the costs here, where the only question was on the plaintiff's right to restrain the defendant in the manner prayed. As to the question on the right to appeal for costs only, it was of great importance to understand it correctly. The cases were numerous in which the doctrine of appealing for costs only had been defined. The general rule is, that there cannot be an appeal for costs which depend upon the discretion of the court adjudicating upon them from circumstances before it, and with which circumstances this court may not be acquainted. The exceptions to this rule are, where a principle is involved—practice to be defined—a particular estate or fund to be charged—or the costs have been refused in a bill of discovery—or contrary to general practice. In *Owen v. Griffith*, Ambler, 520, Lord Hardwicke heard an appeal for costs only where a mortgagee who is entitled to them by the practice of the court had been refused them. This case was followed by Lord Northington in *Cowper v. Scott*, 1 Bro. 141. His lordship then referred to two cases decided by himself; viz., *Taylor v. Southgate*, and *Angell v. Davis*, *supra*, in which an appeal for costs only had been entertained on the same principle and

upon the ground of miscarriage in the court below, and concluded by saying that he thought the decree on further directions in the present case was a miscarriage, as the plaintiff had failed to make out at law the title which alone could give him the relief sought, and consequently that the bill must be dismissed *with*, instead of *without*, costs.

### Rolls Court.

*Lautour v. Halcombe.* April 15, 1847.

#### DISMISSAL OF BILL.

*The order staying all proceedings against one defendant to a suit, is no answer to a motion to dismiss by another defendant for want of prosecution as against him.*

THIS was a motion by the assignees of one of the defendants to dismiss the bill as against him for want of prosecution. It was opposed upon the ground that the plaintiff was detained in prison for non-payment of costs to another defendant, in a previous cause for the same object as the present, and that all proceedings against this defendant being stayed till payment of these costs, it was impossible for him to prosecute the suit effectually against the defendants, who were now moving to dismiss; and it was stated that the plaintiff was then engaged in negotiations to raise money for the payment of these costs.

Mr. Roundell Palmer for the motion.

Mr. Kindersley and Mr. Elderton, contra.

Lord Langdale inquired, whether the plaintiff would undertake to pay the costs within a week, but as the plaintiff could not give any such undertaking, said, that the bill must be dismissed, observing, that here the plaintiff was stopped by his own default in proceeding against another defendant; an excuse for delay which he could not consider as at all sufficient to deprive a defendant who had performed his duty, of his right to have the bill dismissed for want of prosecution against him.

### Vice-Chancellor of England.

*In re Harwich Railway.* May 25, 1847.

#### PETITION FOR REINVESTMENT OF RAILWAY MONEY. 9 & 10 VICT. C. 20.

*Application to allow the security on which money had been invested under an order of the court to be changed, refused, there being no authority for doing so in the act 9 & 10 Vict. c. 20.*

THIS was a petition by the Harwich railway company for the purpose of obtaining a direction for the sale of the sum of 13,500*l.*, which had been paid into court and invested on exchequer bills under an order of the court pursuant to the act 9 & 10 Vict. c. 20, and that the same might be converted into cash and re-invested, the present state of the funds rendering it advantageous for the company to have it done.

Mr. Bourdillon appeared for the petition.

The Vice-Chancellor asked if the act 9 & 10 Vict. c. 20 gave any authority for doing what was required.

Mr. Bourdillon feared that the words of the act did not apply to the case.

The Vice-Chancellor then said, that as there was nothing in the act authorizing him to grant what was asked he should refuse the application; if he granted it the effect would be to make the court a stock-jobber for the benefit of the railway company, and that parties similarly situated would be continually changing their investments whenever an advantageous opportunity occurred.

### Queen's Bench.

(Before the Four Judges.)

*The Queen v. The Town Council of Litchfield.* Easter Term, 1847.

#### COSTS UNDER THE 5 & 6 W. 4, C. 76, s. 92, ALLOWANCE OF.

*The town council of L. dismissed A., the town clerk, and refused to allow him compensation. A mandamus issued, and the town council returned that they had dismissed A. for misconduct, and set out the grounds of dismissal. The return was traversed, the jury found a verdict for A., and a peremptory mandamus issued to award compensation.*

Held, that the town council, acting under a bona fide supposition that A. had been guilty of misconduct, the costs of these proceedings were properly allowed out of the borough fund, under the 92nd section of 5 & 6 W. 4, c. 76.

*That a retainer given by the town council to their attorney to show cause against the writ of mandamus, was sufficient to justify him in the subsequent proceedings taken in resisting the claim for compensation.*

*It is no objection to this order returned by certiorari, that no bill of costs had been properly delivered.*

*A notice of a meeting to take into consideration the accounts of the borough is sufficiently explicit; at all events, the party objecting should have attended the meeting, and there have objected to the payment of these costs.*

A RULE nisi had been obtained for the purpose of setting aside an order made on the 16th Dec., 1846, by the town council of Litchfield, for the payment of the sum of 200*l.* to Mr. Edgington, the present town clerk of the borough for costs. In 1844, Mr. Simpson was dismissed from the office of town clerk of this borough. He applied for compensation, which was refused. He then obtained from this court a writ of mandamus, and the town council made a return to the writ, stating that Mr. Simpson was dismissed for alleged misconduct, and set forth the grounds on which he had been dismissed. Mr. S. pleaded to the return, and traversed the allegations in the return. The case went down to trial, and a verdict being found for Mr. S., a peremptory mandamus was awarded to grant compensation. The costs incurred in resisting this claim the town council



had ordered to be paid to Mr. Edgington out of the borough fund, under the 5 & 6 W. 4, c. 76, s. 92. The order being removed into this court by *certiorari*, a rule *nisi* was obtained to set it aside.

Mr. Sergeant Talfourd and Mr. Cowling showed cause. There are several objections taken to this order of the town council. It is said that the costs and expenses of these proceedings are not properly payable out of the borough fund under the 92nd section of the Municipal Corporation Act; that Mr. E. had not received a formal retainer from the town council. There was a retainer to defend these proceedings, but it is said there was no retainer to defend the return to the *mandamus*. It was also objected that no bill of costs had been delivered, and that the notice of the meeting of the town council on the 17th Dec. was not sufficiently specific to show that the payment of these costs would be taken into consideration. They cited *Regina v. The Town Council of Litchfield*; <sup>a</sup> *Regina v. Bridgewater*; <sup>b</sup> *Regina v. Thompson*; <sup>c</sup> *Regina v. Mayor of Gloucester*.<sup>d</sup>

Mr. Whately and Mr. Cole, *contra*, were heard in support of these objections.

Lord Denman, C. J. On an application of this sort, the answer, that the town clerk had been dismissed for misconduct, would, if fully made out, constitute a justification to the town council. The jury said there was no such misconduct as would justify dismissal. But it did not follow thence that the town council had not acted on a *bond fide* belief that he had been guilty of misconduct such as to justify dismissal. It was impossible, therefore, to say that the town council had been altogether wrong. Then comes the question whether Mr. Edgington was employed by the town council to the extent to which he had gone in defending them from the claim made by Mr. Simpson. I think Mr. Edgington was justified in acting as he did. We cannot help seeing, from all the circumstances of this case, that the dismissal of Mr. Simpson was on a fair and reasonable belief that he had been guilty of misconduct, and that therefore Mr. Edgington was justified in going the length he did in resisting the claim for compensation. Then, with respect to the notice of the meeting at which the order was made, that was a notice to enter upon the consideration of the accounts of the borough, and the parties who impeach this order have no right to assume that no bill of costs, (which clearly might form part of the accounts,) would be considered. The parties now applying to the court should have attended the meeting to see what was done, and have resisted the vote for payment. The non-delivery of the attorney's bill is not an objection at the present time, it ought to have been made at the time, and then it could only have been a ground for postponing the payment. This rule, therefore, will be discharged with costs.

*Patteson, Wightman, and Erle, J.'s, concurred.* Rule discharged with costs.

## Queen's Bench Practice Court.

(Before Mr. Justice Erle.)

*James v. Brook.* Hilary Term, Feb. 1 & 21.

COSTS OF A CAUSE.—SEVERAL ISSUES.—PRACTICE.

*In an action on the case for defamation, the declaration contained three counts. At the trial the verdict was for the defendant on the two first counts, and for the plaintiff on the third count, with 150*l.* damages: subsequently the judgment was arrested on the third count. Held, that the defendant was only entitled to his costs of the issues found for him, and not to the general costs of the cause.*

CASE for defamation. The declaration contained three counts. Pleas, "not guilty" to the whole declaration, and a special plea of justification to each count. The plaintiff took issue on the plea of not guilty, and replied *de injuria* to the special pleas. At the trial the jury found a verdict for the plaintiff on the issue raised by "not guilty" as to the third count, and assessed the damages at 150*l.* They also found for the plaintiff on the issues raised on the special pleas, but for the defendant on the issues raised by the plea of not guilty to the first and second count. Subsequently, judgment was arrested on the third count, and the defendant got the *postea*. On the taxation before the Master, the defendant contended, that as judgment had been arrested on the third count, that he had succeeded on the whole record, and therefore was entitled, not only to his costs on the issues raised by the plea of not guilty to the first and second count, but also to the general costs of the cause. On the other hand, the plaintiff contended that he was entitled to the costs caused by the pleas of justification, and that the defendant was only entitled to the costs of the issues found for him, and that neither party was entitled to the general costs of the cause. The Master allowed the plaintiff the costs of the issues raised by the pleas of justification, but gave the defendant his costs on the issues raised by "not guilty" to the first and second count, and also the general costs of the cause.

*Hugh Hill* having, on the 16th of January, obtained a rule *nisi* calling on the defendant to show cause why the Master should not review his taxation.

*Hoggins* now (Feb. 1st,) showed cause, and contended, that although there were no authorities on the subject, yet that it was always the practice that one of the parties to an action got the general costs of the cause, and that upon the present state of the *postea* the defendant was entitled to the general costs. Here the defendant had obtained the verdict of a jury on the only causes of complaint which the plaintiff had any right to carry down to trial, and as to the other, the court, by arresting the judgment, had said that it was one not maintainable in law, and ought never to have been placed on the record. This being so, the defendant had sub-

<sup>a</sup> 4 Q. B. R. 893. <sup>b</sup> 10 Adol. & Ellis, 711.

<sup>c</sup> 5 Q. B. R. 477.

<sup>d</sup> Id. 862.



stantially succeeded in the action upon the whole record, and therefore ought to have the general costs of the cause.

*Hugh Hill*, contra, submitted that neither party was entitled to the general costs: at common law neither plaintiff nor defendant could claim costs; therefore the right to them depended upon certain statutes and rules of court; the first of these being the Statute of Gloucester, 6 Edw. 1, c. 1, which gave costs to a plaintiff where he recovered damages. Then comes 23 H. 8, c. 15, which gives costs to a defendant in certain actions where the plaintiff has been nonsuited, or a verdict passes against him at the trial: this was extended to all actions by 4 Jac. 1, c. 3. Under these statutes it is clear that a defendant was never entitled to any costs if the plaintiff succeeded at the trial in any cause of action. *Norris v. Waldron*, (2 Wm. Blackstone, 1199.) Then come the rules of Hil. Term, 2 W. 4, r. 74, and 4 W. 4, r. 7; but these merely give to the defendant the costs of any issues found for him. Now it is admitted that the defendant in this case is entitled to the costs of the issues found for him, but not the general costs of the cause. It is said that he has succeeded on the whole record. That is not so. What is there to show that the general costs of the cause are included in the issues on the two counts found for the defendant, without reference to the third count, which was found by the jury for the plaintiff? If we refer to the form of entry of arrest of judgment in *Tidd's Forms*, (8th ed. 332,) the entry is, "we omit to give judgment upon the verdict aforesaid;" how then can it be said that the defendant has succeeded upon the whole record.

*Cur. ad. vult.*

*Wightman, J.*, (25th Feb.,) delivered the judgment of *Erle, J.* In this action, which was for defamation, the declaration contained three counts; and at the trial the verdict was for the defendant on two counts, and for the plaintiff on the third. The judgment upon the third count was afterwards arrested. The *postea* was given to the defendant, and the Master taxed the costs of the cause to him. A rule *nisi* for a review of the taxation was subsequently obtained, and I am of opinion that it should be made absolute on the ground that the defendant is only entitled to the costs of those issues which were found for him. Before the statute of 23 Hen. 8, the defendant was not entitled to any costs. By that statute and the 4 Jac. 1, c. 3, the defendant was entitled to costs in case the plaintiff was nonsuited, or a verdict found against him. These statutes give the defendant no right to costs where the verdict was in part for the plaintiff. By the 8 & 9 W. 3, c. 11, s. 2, the defendant became entitled to costs if he obtained judgment on demurrer, but that has no application here. Therefore, until the rules of H. T., 2 W. 4, and H. T., 4 W. 4, the defendant in such a case as this was not entitled to any costs. Those rules, as it appears to me, give him only the costs of the issues found for him. By the rule H. T., 2 W. 4, r. 74, the plaintiff's costs

upon issues on which he has not succeeded are taken away, and the costs of the issues found for the defendant are directed to be deducted from the plaintiff's costs. Under this rule the defendant cannot claim the costs of the cause. The rule H. T., 4 W. 4, c. 7, directs, that in the case of several issues, a verdict and judgment shall pass at the trial against either party in respect of the issues which he has failed to establish, and that he shall be liable to the other party in respect of all costs occasioned by such issues. Under this rule the defendant can only claim the costs of the issues found for him at the trial. The taxation should therefore be reviewed on that principle. Rule absolute.

### Common Pleas.

*Bowyer v. Cook.* Easter Term, 1847.

TRESPASS AFTER NOTICE.—COSTS UNDER 3 & 4 VICT. C. 24.—SUGGESTION ON THE RECORD.

*Where, in an action for a trespass committed after a notice not to trespass, the damages recovered are under 40s., and the judge at the trial does not certify, the plaintiff is entitled to enter a suggestion on the record of such notice, in order to obtain his full costs.*

*A notice that, unless the defendant removed certain stakes in such a manner as should be satisfactory to the plaintiff, a further action would be brought, is a sufficient notice not to trespass within the meaning of the 3 & 4 Vict. c. 24, with reference to the question of costs in a second action of trespass for continuing to keep up such stakes.*

TRESPASS for breaking and entering the plaintiff's close, continuing there certain stakes and earth, and causing to flow thereon a stream of water. Pleas, not guilty, secondly, a traverse that the close in question was the plaintiff's, and thirdly leave and license. At the trial of the cause before *Parke, B.*, at the last Bedfordshire assizes, it appeared in evidence that a previous action of trespass against the now defendant for diverting the water-course in question, and driving the same stakes in the plaintiff's ground, had been put an end to by the acceptance on behalf of the plaintiff of 40s. Two months afterwards the plaintiff's attorney wrote and sent to the defendant the following letter

"Hemel Hempstead, 8th August, 1845.

"SIR,—We are directed by Mr. Bowyer to give you notice that unless you divert the course of the water so as to prevent its flowing over his land and ditch, and restore the ditch to its former state, and remove the earth, stumps, stakes, and other encroachments on his land and fence in the parish of Ippolets in such a manner as shall be satisfactory to him, a further action will be brought against you previous to Michaelmas Term."

(Signed,) "SMITH & GROVER."

"To Mr. John Cooke."

The present action had been brought for an omission to comply with the terms of this letter, and the jury, under the direction of the learned judge, had found a verdict for the plaintiff, in respect only of the continuing of the stakes by the defendant, damages 20s. The learned judge, upon this verdict, refused to certify for costs under the statute 3 & 4 Vict. c. 24, s. 2, and a rule *nisi* had been obtained to enter a suggestion on the record of notice not to trespass having been served previously to the action, in order to entitle the plaintiff to costs.

Peacock now showed cause. In this case the judge at the trial refused to certify that the trespass was wilful and malicious, and it is now sought, notwithstanding, to obtain full costs for the plaintiff under the 3rd section of 3 & 4 Vict. c. 24, which provides that plaintiffs are not to be deprived of costs in actions of trespass where notice not to trespass has been previously given. The first point is, whether or not in the case of a written notice, as here, the entering of a suggestion on the roll is the course necessary to be taken in order to obtain the costs. In the present case the judge might have certified at the trial, for by the case of *Sherwin v. Swindall*, 12 M. & W. 783, where the trespass complained of had been committed after a warning not to do so, it was held that the judge had power, under the 2nd section of the 3 & 4 Vict. c. 24, to certify that the trespass was "wilful and malicious" so as to give full costs, and that the 3rd section was intended only to prevent that act interfering with the 8 & 9 W. 3, c. 11, s. 4. The second point is, that the notice served is not such as the act contemplated. The only trespass here was in respect of the continuance of the stakes, and the notice is not positively to remove the stakes, or not to commit a trespass, but simply that unless something were done, an action would be brought. In *Holmes v. Wilson*, 10 Ad. & E. 503, where the trespass complained of was a continuance of an erection, the notice given required in direct terms the removal of the trespass. It was submitted, therefore, that the notice in the present case was insufficient.

Rose, in support of the rule, was not called upon.

Wilde, C. J. I think the rule ought to be made absolute. The statute 22 & 23 Car. 2, c. 9, took away costs generally in actions of trespass where the damages were under 40s., and, except by that statute, there was nothing to deprive a plaintiff of costs up to the passing of the 8 & 9 W. 3, c. 11. The effect of this latter statute was to give costs, and not to take them away, and it is a qualification of the previous statute of Charles. Then, by the 3 & 4 Vict. c. 24, the statute of Charles was repealed, so far as related to personal actions, and the plaintiff, in an action of trespass thereupon, became entitled to costs, for the only statute which took them away was repealed, and to hold that the statute of William takes away costs, would be to give it a contrary effect to that which appears to have been the object

of the legislature. Then by the provisions of the 2nd section of the 3 & 4 Vict. c. 24, disentitling a plaintiff to any costs where he recovers less than 40s. damages, unless the judge certify, &c., the operation of the act is not left to what would otherwise have been its full effect, and incorporating the whole together, the effect will be, that in all actions of trespass, except where the trespass has been committed after a notice not to trespass, the plaintiff shall only be entitled to his full costs in the event of the judge certifying. In the case of *Daw v. Hole*, 15 Law J., N. S., 2 B. 32, it is true, a contrary decision was come to, but there the attention of the court was not called to the fact of the statute which took away costs having been repealed, and to the true effect of the existing statutes. On the whole, therefore, it seems to me that as a matter of right the plaintiff in an action of trespass on land is entitled to his costs after notice has been served. The next question of whether or not the trespass was committed after notice given, depends on whether the continuance of the stakes in the ditch operated as a trespass, and that it did so I own appears to me to be quite clear, both on principle and according to the cases. Then, the only remaining question is, what, in a case like the present, is the proper course for a plaintiff to take in order to entitle himself to costs. He is not bound by the circumstance of the judge at the trial not having certified, as in this case no certificate was necessary. The right to costs otherwise is made by the statute to depend on the giving of a notice, and the record, which ought to show that the plaintiff is entitled to costs, is here silent as to notice, from it the plaintiff appears to have no right to costs. He, however, now comes to the court and contends that he is within the statute which gives costs, and ought to have an opportunity to show that sufficient notice has been given. For this purpose the mode of proceeding is by a suggestion on the record, and by that means alone the plaintiff's right can be properly and effectually secured, and, therefore, I think the rule ought to be made absolute.

The rest of the court concurred.

Rule absolute.

### Exchequer.

*Ivimey v. Marks*. Easter Term, 1st May, 1847.

### ATTORNEY'S BILL.—CHANCERY.—COMMON LAW.

Where an attorney's bill contains charges for business done in the Court of Chancery and also in a Common Law court, it should mention each court in which such business was done. Therefore, where a bill stated that some of the charges were for business done in the Court of Chancery, and it did not appear in what court the other business was done, except that the items showed that it must have been in one of the superior common law courts. Held, insufficient, under the 6 & 7 Vict. c. 73.

DEBT for work and labour as an attorney and solicitor. Plea, that no signed bill was delivered or sent to the defendant, as required by the statute (6 & 7 Vict. c. 73, s. 37.) Replication, that a signed bill was delivered upon which issue was joined. At the trial, before *Platt, B.*, it appeared that a bill was delivered, part of which was stated to be for business done in a suit in Chancery, which was headed by mistake "*Churchill ats. Marks*," instead of "*Marks ats. Churchill*." The other part of the bill related to a suit between the defendant and one *Erskine*, but it did not appear in what court the business was done, except that some of the items, such as charges for summonses for time to plead, attending judges' clerks, &c., showed that it must have been in one of the superior courts of common law. It was objected, on the part of the defendant, that there was no sufficient delivery of a signed bill, as required by the statute. The learned judge directed a verdict for the plaintiff, reserving leave for the defendant to move to enter a nonsuit. A rule *nisi* having been obtained,

*Farrer* showed cause. The bill clearly shows that part of the business was done in the Court of Chancery. The reversal of the names of the plaintiff and defendant was a mere clerical error, by which the defendant could not have been misled. Therefore, at all events, the plaintiff is entitled to recover for this portion of the bill. *Walter v. Lacy*, 1 Man. & G. 54; *Drew v. Clifford*, Ry. & Moo. 280. Under the 42nd section of the 6 & 7 Vict. c. 73, the defendant might have laid the whole bill before the taxing officer of the Court of Chancery, who is empowered by that section to request an officer of the common law courts to assist him in taxing it. With respect to the other portion of the bill, the charges themselves clearly show that they are for business done in one of the superior courts of common law. All that is required by the statute is, that the bill should give substantial information of the court in which the business is done. *Engleheart v. Moore*, 4 Dow & L. 60. (*Parke, B.* referred to *Lewis v. Primrose*, 6 Q.B. Rep. 265; and *Martindale v. Faulkner*, 2 Com. B. Rep. 706.)

*Peacock*, in support of the rule, (being directed by the court to confine himself to the point as to the plaintiff's right to recover for the business done in Chancery,) argued that this was different from the case of two separate bills. Here the items were so blended together, that the defendant could not tell whether he might with safety proceed to tax the amount, for unless one-sixth of the whole was taken off, he would have to pay the costs of the taxation.

*Pollock C. B.* The rule must be absolute. The case of *Walter v. Lacy* occurred before the 6 & 7 Vic. c. 73, which renders every part of an attorney's bill liable to taxation; so that the distinction between those parts of the bill which are taxable and those which are not no longer exists. With respect to *Drew v. Clifford*, the point was reserved by the judge at *nisi prius*; but no motion was ever made. There is a case

of *Hill v. Humphreys*, 2 B. & P. 343, which is much more to the purpose; there it was held that if an attorney introduces into his bill items not within the 2 Geo. 2, c. 23, and fail, because it was not properly delivered according to that statute, he must fail altogether, and cannot recover for such items only. When a bill is delivered under the 6 & 7 Vic. c. 73, the whole of it must be taxed; and if it contain charges for business done in chancery, and also at common law, and does not state in what court of common law the business was done, it is the same as no bill at all. I think this is not such a bill as another attorney could fairly advise the defendant as to the propriety of having it taxed.

*Parke, Rolfe, and Platt, Bs.* concurred.  
Rule absolute.

## LEGAL OBITUARY.

1847, April 7.—William Brookman Violet, of Banwell, near Cross, Somersetshire, Solicitor. Aged 24.

April 9.—John Allison, of Huddersfield, Solicitor. Aged 70.

April 14.—John Curwood, Barrister-at-Law; called to the bar 1796.

April 15.—Charles Dodd of Billiter Street, Solicitor. Aged 70.

April 15.—William Gray Polson, of the Inner Temple, Barrister-at-Law. Aged 73. Called 24th Nov. 1809.

April 17.—H. Scott of Hull, Solicitor. Aged 40.

April 17.—Henry Kensit of Bedford Row. Aged 80.

April 19.—At Madeira, John Boscawen Monro, Esq., of the Middle Temple, Barrister-at-Law; called to the bar Trinity Term, 1817.

May 9.—George Barne Barlow, Assistant Master of the Crown Office. Aged 41.

May 9.—Frederick George Cox, of Bennett's Hill, Doctors' Commons, Proctor.

May 12.—William Eastwood, of Todmorden, Solicitor. Aged 35.

May 13.—George Suttell Wilson, M. A., Barrister-at-Law, of Gray's Inn, aged 48; called to the bar Michaelmas Term, 1831.

May 13.—Joseph Blower, of Lincoln's Inn Fields, Solicitor. Aged 63.

May 15.—J. Edwards, of Plas Llanddausaint, Anglesey, Solicitor.

May 16.—Charles Attwaters, of Queen Street, Cheapside, Solicitor, aged 41.

May 19.—John M'Dowall, of the Inner Temple, Barrister-at-Law; called to the bar 29th Jan., 1841.

May 21.—David William Crammond, of 7, New Inn, Strand, Solicitor.

CHANCERY CAUSE LISTS.

Lord Chancellor.

Trinity Term, 1847.

AT WESTMINSTER.

APPEALS.

S. O. G.	Attorney-Gen.	{ Masters & War- dens, &c. of the City of Bristol }	appeal
S. O.	Black	Chaytor	do.
S. O.	Johnson	Reynolds	fur. dirs. by ord.
S. O.	Watts	Hyde	appeal
S. O.	Caton	Rideout	do.
	Dean of Ely	Bliss	do.
	Perry	Meddowcroft	{ appeal
		9 causes	}
S. O.	Blair	Bromley	do.
	Rawlins	Moss	do.
	Dale	Hamilton	3 appeals.
	Hobson	Everett	appeal.
	Law	Law	do.
	Lenaghan	Smith	do.
	Eversfield	Troup	do.
	Allen	Knight	do.
	Pearce	Pearce	do.
	Dunston	Paterson	do.
	Dobson	Lyall	do.
	Robinson	Wall	do.
	Butlin	Masters	do.
	Westwood	Slater	{ do.
		4 causes	}
{	Dunning	Hards	{ do.
{	Ditto	Barneby	{ 2 appeals.
{	Winstanley	Smith	{ 2 appeals.
	Scawin	Watson	appeal.
{	Hodgkinson	Barrow	{ do.
{	Ditto	Jackson	{ do.
	Glascott	Lang	do.
	Okill	Whittaker	do.
{	Williams	Powell	{ do.
{	Ditto	Davis	{ do.
{	Dawson	Paver	{ do.
{	Ditto	Ditto	{ do.
{	Attorney-Gen.	Pearson	{ do.
{	Ditto	Steward	{ do.
{	Ditto	Hill	{ do.
	Wood	Rowcliffe	2 appeals.

Master of the Rolls.

(JUDGMENTS reserved.)

Attorney-General v. Magdalen College, Oxford.

{ Allfrey v. Allfrey. }

{ Same v. Same. }

Elderton v. Lack.

Lee v. Lockhats, 7 causes.

PLEAS AND DEMURRERS.

Stand over, Dean of Ely v. Gayford, six pleas.

CAUSES.

Part heard, { A. J. B. Hope v. Hope } and two  
                  { A. J. Hope v. Same. } petitions.  
                  { H. B. Hope v. Same. }

S. O. to file suppl. bill, Heles v. Lord Bexley, Same v. Same, exons.

Part heard, Churchman v. Capon, fur. dirs. and costs.

Third day Hargrave v. Hargrave, fur. dirs. and costs.

Third { Bagshaw v. Parker. }  
day { Same v. Same. }

To present petition, Stourton v. Jerningham.

Third day, Wheatley v. Wheatley.

Ditto, Humble v. Fenwick.

Part heard, Attorney-General v. Wright, fur. dirs. and costs.

Same v. Same, suppl. bill.

After Term, Gordon v. Abdy, fur. dirs. and costs.  
Third day, Wilkinson v. Charlesworth, fur. dirs. and costs and petn.

Not before { Smith v. Earl Effingham, } fur. dirs.  
31st May { Same v. Same. } and costs.  
                  { suppl. }

After Term, Hooper v. Denoon.

Third day { Attorney-General v. Gilbert }  
                  { Same v. Birmingham School. }

After Tm. { Bourne v. Mole, }  
                  { Same v. Elkington, }  
                  { Same v. Same. }

Third day, Attorney-General v. Pretymann, fur. dirs. and costs and petn.

Third day, Gwynne v. Jones, fur. dirs. and costs.

Senhouse v. Hall.

{ Newman v. Allen }

{ Same v. Same. }

Short, Holloway v. Jacobs,

Third day, Swayne v. Swayne.

Third day { Leake v. King }  
                  { Same v. Snow } exons.  
                  { Same v. Bridger }

NEW CAUSES.

Williamson v. Gordon.

Huddy v. Haddy.

Attorney-Gen. v. Bingham.

Harvey v. Tipple.

Watts v. Christie.

{ Thomas v. Bowyer } fur. dirs. and costs.  
Same v. Same { }

{ Freeman v. Day } suppl.  
Thorns v. Thorns { }

Wormald v. De Lisle.

Read v. Strangways.

Wood v. Marquis of Londonderry.

{ Madeley v. Harborne }  
Same v. Same. { }

{ Hele v. Lord Bexley }

{ Same v. Bowyer }

{ Same v. Donovan }

{ Butcher v. Knowles }

{ Eardley v. Owen }

{ Same v. Same }

{ Same v. Lloyd }

Wellesley v. Earl of Mornington.

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, AND FURTHER DIRECTIONS.

Beale v. Alston, dem.

White v. Jackson, objection as to parties.

Potter v. Warren, dem.

Lovell v. Andrew, objection as to parties.

S. O. G. { Parker v. Day }  
                  { Ditto v. Goude }

Hickson v. Smith.

S. O. G. Amey v. Walker, 2 causes.

Smith v. Bury and Ipswich Railway Company.

{ Ware v. Rowland, fur. dirs. pt. hd.  
 Same v. Wilson, cause.  
 Wastell v. Leslie, 8 causes, exons. and fur. dirs.  
 Evans v. Crosbie.  
 Fussell v. Hooper, fur. dirs. and costs.  
 { Cooke v. Cholmondeley }  
 Ditto v. Moore }  
 Sutton v. Clifford, fur. dirs. and costs.  
 Hackett v. Clifton ditto.  
 6th day { Attorney-General v. Grainger }  
 of { Governors of Christ's Hospital } by order.  
 Term. { v. Grainger }  
 S. O. Webb v. Webb.  
 Byrn v. Hay.  
 Herring v. Hay.  
 { Hiles v. Moore }  
 Same v. Gleadow }  
 Same v. Moore }  
 Carpenter v. Bott, exons.  
 Edwards v. Priestly, fur. dirs. and costs.  
 Steward v. Forbes.  
 Tinslay v. Genese.  
 Bourne v. Dufaur, fur. dirs. & costs and petn.  
 Jarvis v. Bullas.  
 Paynton v. Kingdon, 3 causes.  
 Williams v. Jones, 2 causes.  
 Robinson v. Smith, fur. dirs. and costs.  
 Waller v. Westcott, ditto.  
 Cochran v. Fearon, exons.  
 Dickinson v. Callbeck.  
 Bowers v. Thorne, fur. dirs. and costs.  
 Short, Dehany v. Scott, ditto.  
 Fagge v. Fagge.  
 Dallimore v. Ogilvie, fur. dirs. and petition.  
 Anning v. Hurley, fur. dirs. and costs.  
 Rippin v. Dolman, ditto.  
 { Morrison v. Hoppe }  
 Ditto v. King }  
 Rimell v. Wheatley.  
 Perry v. Howell.  
 Attorney-Gen. v. Croft.  
 Bateman v. Wilks.  
 Short, Tyacke v. Dash.  
 Ditto Same v. Mayn.  
 Rand v. M'Mahon, exons. and fur. dirs.  
 Kincaid v. Nunn.  
 Beech v. Ford.  
 Hewlett v. Wellington, fur. dirs. and costs.  
 Major v. Major, 2 causes.  
 Brierley v. Andrew.  
 Lewis v. Damer.  
 Rand v. M'Mahon, exons.  
 24th May, Chambers v. Waters, exons.  
 Hunt v. Peacock.  
 Hickson v. Manwaring.  
 Brewster v. Thorpe, 2 causes.  
 Moyer v. Measures.  
 Short, Allen v. Allen, rehearing and fur. dirs.  
 Darnell v. Swift.  
 Taylor v. Webley, fur. dirs. and costs.  
 Nokes v. Earl of Kilmorey.  
 Ward v. Price.  
 Halford v. Stone.  
 Sheffield v. Von Donop.  
 { Milroy v. Milroy } fur. dirs. and costs.  
 Ditto v. Dean }  
 Hoole v. Roberts ditto.

#### Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

To fix a day, Sibson v. Edgeworth, 2 dems.  
 Knill v. Chadwick, demr.  
 Smith v. Smith, 3 causes.

Bonsfield v. Mould, 2 causes pt. hd.  
 S. O. G., Teed v. Carruthers, 5 causes, fur. dirs.  
 22nd May, Arrow v. Mellersh.  
 { Barker v. Birch, }  
 Same v. Same, }  
 Wills v. Same. }  
 22nd May, Sagar v. Petty.  
 22nd May, Rees v. Williams.  
 Smith v. Smith.  
 Scholfield v. Bourdieu.  
 Indigent Blind School v. Bird, fur. dirs. and costs.  
 Heming v. Archer, 5 causes, ditto.  
 Kendall v. Davies.  
 Ricketts v. Bell.  
 Lester v. Archdale.  
 Pettigrove v. Rogers, 3 causes.  
 Wool v. Townley.  
 Darby v. Browning.  
 Wood v. Hardisty, exons.  
 Smith v. Whitmore.  
 Davies v. Currie, exons. and fur. dirs.  
 Bennett v. Boughton, 5 causes.  
 Duke of Beaufort v. Phillips.  
 Llewellyn v. Morgan.  
 Vinkers v. Oliver, fur. dirs. and costs.  
 Jefferson v. Ford.  
 Clive v. Beaumont.  
 Swaffield v. Orton.  
 Campbell v. Underwood.  
 Hewett v. Snare, fur. dirs. and costs.  
 Chambers v. Harman, ditto.  
 Aitken v. Haram, ditto.  
 Hervey v. Hewitt, 2 causes.  
 Gregson v. Willoughby.  
 Walbrook v. O'Bryen, fur. dirs. and costs.  
 Shaw v. Wild, ditto.  
 Inglis v. Bromley, ditto.  
 Bunce v. Turner.  
 Melland v. Gray, fur. dirs. and costs.  
 Child v. Walker.  
 Elliott v. Elliott, fur. dirs. and costs.  
 Cunningham v. Murray, ditto.  
 Burchet v. Howitt.  
 Scholfield v. Calmac.  
 Lewis v. Puxley, fur. dirs. and costs.  
 Gellan v. Morrison.  
 Massey v. Duncan.  
 { Pearse v. Sinkins }  
 Ditto v. Orchard. }

#### Vice-Chancellor Stigram.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Swinnerton v. Heming, dem.  
 Michs. T., Menzies v. Desanges.  
 Williams v. Teale, 4 causes, pt. hd.  
 Ditto v. Ditto.  
 Hicks v. Graham.  
 Attorney-General v. Ward.  
 { Shipton v. Rawlins. }  
 Ditto v. Deal. }  
 Ditto v. Rawlins }  
 Phillipson v. Gatty.  
 28th { Chapman v. Plumbly, }  
 May { Ditto v. Steward. }  
 To fix { Moor v. Vardon, }  
 a day { Ditto v. Lachlan. }  
 Smart v. Smart.  
 { Steedman v. Poole }  
 Ditto v. Cole. }  
 Fraser v. Spencer, 2 causes.  
 22nd May, Laycock v. Johnson, fur. dirs. and costs.

Chappell v. Rees, at request of defendant.  
 Seward v. Clark.  
 Dowle v. Lucy, fur. dirs. and costs.  
 28th May, Topham v. Lightbody, exons.  
 26th May, Walker v. Holloway.  
 Rickards v. Stuckley.  
 { Clarke v. Melville. }  
 { Ditto v. Rickards. }  
 Adams v. Dunn.  
 Peed v. Geo.  
 Duke of Beaufort v. Morris.  
 Lewis v. Jones, fur. dirs. and costs.  
 22nd May, Mortimer v. Ireland.  
 { Thornton v. Portsmouth and Arundel Rail. Co. }  
 { Ditto v. Hope. }  
 Cochrane v. Wiltshire.  
 Perrin v. Eldon.  
 Gaymer v. Hales.  
 Farman v. Wiggins, fur. dirs. and costs.  
 Hallett v. Hayes, ditto.  
 Rochfort v. Lambert, 3 causes, ditto.  
 Chappell v. Rees.  
 Gatty v. Phillipson.  
 Short, Ricardo v. Duff.  
 { Belsham v. Percival }  
 { Ditto v. Harrison. }

## COMMON LAW CAUSE LIST.

### Common Pleas.

*Remanet Paper of Trinity Term, 1847.*

*Enlarged Rules.*

To 1st day.—Gardner and others v. Dickson and another.  
 To 2nd day.—Doe dem Harrison v. Hampson.  
 To 6th day.—In the matter of the arbitration of Bates and others.

*New Trials of Michaelmas Term, 1846.*

*Middlesex.*—Elderton v. Emmons, Secretary, &c.  
 (6th May, partly heard.)

*Middlesex.*—Shaw and others v. Clarkson.

*London.*—Brown v. De Winton.

*London.*—Hartley v. Cummings and another.

*London.*—Hartley and another v. Cummings and another.

*London.*—Baker and another v. Paskitt.

*London.*—Mollett v. Wackerbarth and others.

*London.*—Angle v. Gilpin.

*London.*—Maxey v. Thomas.

*Berks.*—Pryce v. Belcher.

*Surrey.*—Dawson and others v. Morrison.

*Surrey.*—Stead v. Anderson.

*Surrey.*—Collins v. Newstead.

*Surrey.*—King v. Norman.

*Surrey.*—Couling v. Cox.

*Liverpool.*—Tuckey, executor, v. Hawkins.

*Liverpool.*—Winch and others v. Hamilton and another.

*Newcastle.*—Lambert and another v. Knill.

*Devon.*—Young v. Grove.

*Cornwall.*—Ricketts and others v. Bennett and another.

*Cornwall.*—Doe d. Lord v. Crago.

*Cornwall.*—Coode v. Cayzer.

*Derby.*—Cox, surviving, &c. v. Glue.

*Derby.*—Same v. Saint.

*Derby.*—Same v. Mousley.

*Derby.*—Batho and another v. Batthyany.

*Warwick.*—Valpy and others, assignees, &c. v. Sanders and another.

*Warwick.*—Tunnicliff v. Tedd.

### *New Trials of Hilary Term last.*

*Middlesex.*—Doe (Muller) v. Claridge.

*Middlesex.*—Varney v. Hickman.

*Middlesex.*—Streeter v. Bartlett.

*London.*—Hitchin v. Groome.

*London.*—Smith and others, assignees, v. Watson.

*London.*—Gay and another v. Lauder.

*London.*—Miles v. Pope.

*London.*—Beaumont v. Brengeri.

*London.*—Brown v. Chapman.

*London.*—Baker v. Sayer.

*London.*—Adlington v. West.

### *New Trials of Easter Term last.*

*Middlesex.*—Morgan and another, ex. v. Earl of Abergavenny.

*Middlesex.*—Thompson v. Stocken.

*Middlesex.*—Hume v. Davis.

*Middlesex.*—Goddard v. Dobson and another.

*Middlesex.*—Finney v. Tootell.

*Middlesex.*—Murray and others v. Hall.

*London.*—Nickels v. Ross, jun.

*London.*—Same v. Same.

*London.*—Humphreys v. Shuttleworth.

*London.*—Goodlake v. King.

*London.*—Green v. Morson and another.

*London.*—Hopwood v. Thorn.

*London.*—Ingram v. Symons.

*London.*—Barker v. Griffiths.

*London.*—Perry v. Parr.

*London.*—Lindus v. Bradwell.

*London.*—Blackie v. Pidding.

*Surrey.*—Eyre v. Scovell and others.

*Denbigh.*—Beech v. Jones.

*Chester.*—Claddock v. Wilbraham and another.

*Chester.*—Worthington v. Warrington.

*Gloucester.*—McLeod v. Reynolds.

*Salop.*—Doe (Bather) v. Bryne and another.

*Hants.*—Auscil v. Richards.

*Somerset.*—Card v. Case.

*Norfolk.*—Garrard v. Tuck (in dower.)

*Suffolk.*—Thorpe v. Barber and another.

*Suffolk.*—Vipan v. Gay and others.

*Suffolk.* Same v. Same.

*Brecon.*—Griffiths v. Powell.

*Liverpool.*—Howden v. Standish, Esq.

### *Applications for New Trials suspended.*

*Middlesex.*—Salmon v. Starkey.

*London.*—Parry v. Evans.

### CUR. AD. VULT.

Patteson and others v. Holland and others.

To stand over till the *sci. fa.* in Queen's Bench is disposed of.

Brown and others v. Mallett.

Dixon the younger v. Clark and another.

Rich v. Basterfield.

Tilt v. Dickson.

Bayley v. Bradley.

Parsons v. Sexton and another.

Fagan v. Harrison.

*Demurrer Paper of Trinity Term, 1847.*

Wednesday 26th May, Special arguments.

Sharland v. Leifchild.

Valpy and others, assignees, v. Gibson and another.

Wright v. Hutchison.

Mortimer v. Gell.

Harris v. Marten, sued, &c.

Parsons v. Gingell.

Lewis v. Gingell.

Ingram v. Hoskins.

Harrison v. Cotgreave.

Logan v. Hall and another.  
 Hopkins v. Prescott.  
 Joel v. Deen.  
 Leigh v. Earl of Balcarras and others.  
 Hodgkinson v. Taylor.  
 Smart and another v. Sandars and others.  
 Jones v. Sawkins.  
 Dicker v. Jackson.  
 Tamlyn v. Woolcock.  
 Owen v. Challis.  
 Sullivan v. Prole.  
 Rutson v. Pratt.  
 Follett and another, assignees, v. Hoppe.  
 Cocks v. Purday.  
 Pilbrow v. Pilbrow's Atmospheric Railway and Canal Propulsion Company.  
 Harris v. Marten, sued, &c.  
 Smith v. Kenrick.

Friday, 28th May, Special arguments.

Hayward v. Bennett.

Peter v. Daniel.

Engstrom and others v. Brightman and others.

Wednesday June 2 Special arguments.

Friday . . . 4 Same.

#### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From April 20th to May 21st, 1847, both inclusive, with dates when gazetted.*

Briggs, Jeremiah, & William Sculthorpe, Horsefair-street, Leicester, Attorneys and Solicitors. May 18.

Gee, William, John Dobede Taylor, and Joseph Fairman, so far as regards the said William Gee, Bishop Stortford, Solicitors and Attorneys. April 23.

Millington, John Boyfield and Buxton Kenrick, Boston, Attorneys and Solicitors. May 11.

Oldaker, Edmund Wells, Francis Dovey Woodward, and Edwin Ball, Pershore, Attorneys and Solicitors. May 7.

Roy, Richard, Joseph Blunt, junior, and David Graham Johnstone, so far as regards the said D. G. Johnstone, Lothbury, Solicitors and Attorneys. May 4.

Ryley, Edward, Charles, and Stanley Harris, Chipping Barnet, Attorneys and Solicitors. April 23.

Sudlow, John James Joseph, the elder, John James Joseph Sudlow, the younger, Alfred Sudlow, and John Smale Torr, so far as regards the said Alfred Sudlow, 20 Chancery-lane, Attorneys and Solicitors. May 18.

#### MASTERS EXTRAORDINARY IN CHANCERY.

*From April 20th to May 21st, 1847, both inclusive, with dates when gazetted.*

Badger, Walter Samuel, Rotherham. May 21.  
 Chorlton, John Higginbottom, Runcorn. May 7.  
 Gartside, Benjamin, Manchester. April 30.  
 Hemmant, John, Whittlesey. May 14.  
 Mackenzie, John Henry, Teignmouth. April 23.  
 Neate, Henry, Devizes. April 30.

#### PERPETUAL COMMISSIONER.

*Appointed under the Fines and Recoveries Act.*

Chalk, Charles, Brightelmstone for Sussex. April 23.

## PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

### House of Lords.

#### NEW BILLS IN PROGRESS.

Consolidation and Amendment of the Law of Bankruptcy. For 2nd reading. The Lord Chancellor.

Debtor and Creditor. For 2nd reading. The Lord Chancellor.

Repeal of Insolvency Jurisdiction of Courts of Bankruptcy, Abolishing Court of Review, and Reducing Number of Commissioners. (No. 2.) In Select Committee. Lord Brougham.

Threatening Letters. For 2nd reading. Lord Denman.

Clergy Offences. In Committee.

### House of Commons.

#### NEW BILLS IN PROGRESS.

City Small Debts Court. In Committee. Mr. Masterman.

Law of Railways. For 2nd reading. Mr. Strutt.

For the Speedy Trial and Punishment of Juvenile Offenders. In Committee. Sir John Pakington.

Lunatic Asylums Regulation. Att.-General.

Inclosure Act Amendment. Sir F. Thesiger.

Health of Towns. For 2nd reading. Lord Morpeth.

Towns Improvement Clauses. For 2nd reading.

Taxation of Costs on Private Bills. For 2nd reading. Mr. Hume.

Registration of Voters. For 2nd reading. Mr. Walpole.

Highways. In Select Com. Sir Geo. Grey.

Administration of the Poor Laws. For 2nd reading. Sir Geo. Grey.

Copyhold Commission Continuance.

Turnpike Acts Continuance.

Loan Societies Continuance.

Ecclesiastical Courts. Mr. Bouverie.

## THE EDITOR'S LETTER BOX.

The communication of a correspondent at Leeds relating to the defects in "The Commercial and General Lawyer" shall be attended to. Bearing the date of 1846, the work ought at least to notice the alterations made by the statutes of 1845.

We fear we cannot undertake the responsibility of advising on questions such as those stated by "Veritas," and doubt whether the practice would be justifiable towards the bar.

# **The Legal Observer,**

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JUNE 5, 1847.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

## THE SYSTEM OF PRIVATE BILL LEGISLATION.

THE manner and spirit in which what is called "the private bill business," is conducted in both houses of parliament, and especially in the House of Commons, has for many years past been the subject of general complaint and animadversion. The magnitude of the evil is become more striking as the exigences of the country have occasioned a gradual increase in the number of private bills, whilst the numerous applications to parliament, arising from the spirit of railway enterprise within the last three or four years, have tended to expose to all classes of the community the enormities of a system which outside the walls of parliament has long been without advocates.

Whilst the legislature, however, lent a willing ear to the suggestions of every plausible charlatan who recommended alterations in the laws, and sanctioned various uncalled for changes in its administration which experience has already associated with the odious name of "jobs," the monster grievance which stood within its own gates, continued unredressed and without any energetic endeavours having been *hitherto* made to mitigate its injurious effects, or prevent the injustice of which it is the fruitful parent.

It appears, however, from a paper which has been very recently printed by direction of the House of Lords, that this subject at length begins to attract some portion of that attention, to which it is eminently entitled, at the hands of those who have the exclusive power of applying an adequate

remedy. The objections to the present system, as might be anticipated, are not exaggerated, and the statement involves some statistical facts of importance. The printed document consists of a series of propositions which are numbered. The first nine are as follow :—

"That the amount of private bills yearly brought into parliament has been continually increasing till the consideration of them has come to form a large proportion of the business transacted each session, more than 200 in one session having sometimes been passed, and many others thrown out at various stages.

"That the construction of railways has still further and more rapidly increased this amount, so that the average of private and local and personal acts passed during the three sessions 1840, 1841, and 1842, having been 178, there were 171 railway bills brought in during the session 1845, besides common private bills; and during the present session there have been 212 other bills, and 482 railway bills; and in the session of 1845, 241 private acts were passed, containing, 13,624 sections or schedules, besides bills brought in and thrown out at different stages.

"That such private bills have dealt with an immense amount of property, and with the most important rights and interests of the community.

"That most of such bills have the power of compelling landowners and other proprietors to part with their property, or otherwise suffer it to be interfered with; many of them inflict great hardships on individuals; and all of them suspend or abrogate the law of the land in particular instances and for special purposes. All of them, therefore, authorize the doing of acts wholly illegal by the ordinary course of the common and statute law, and most of them authorize acts to be done wholly inconsistent with all natural right.

"That while the most trifling question arising



between parties on the state of disputed facts, or the application of known laws to these facts, must in this and indeed in every country enjoying the blessings of regular governments, come before tribunals qualified by the learning, skill, and experience of the judges composing them to deal with such comparatively easy questions, the oftentimes much more important and much more difficult questions raised by the consideration of private bills only come before committees of both houses, on which professional and experienced men hardly ever sit, and which are wholly composed of persons who can have no experience to guide them, inasmuch as each can only sit on one or two cases in the course of a session.

"That the individual responsibility of the judges who compose the ordinary tribunals of this and all well-governed states affords a security eminently necessary for enforcing the due administration of justice, and for giving the community full confidence in their decisions;—a security held to be necessary, although it is much more difficult for a judge dealing with the known and fixed rules of the law to swerve from his duty and pervert that law to the purpose of injustice, than it is for men who are called upon to decide upon the provisions of a bill professedly creating exceptions to the law for particular purposes, and arbitrarily dealing with rights according to no known and fixed rules or principles whatsoever.

"That in committees of the two houses, and dealing with interests oftentimes incomparably more important than ever come before courts of justice, the members, guided by no fixed rules, changed in each case, unknown to the community, not acting in the eyes either of a watchful public or a jealous profession, act almost wholly without any individual responsibility; nor can be prevented, as judges are, at least in this country, from privately seeing parties behind each other's backs, and proceeding upon information, and listening to reasons, and yielding to motives, of a private and personal nature.

"That the great and increasing mass of private bill business renders it still more difficult for the two houses of parliament to transact such business in a manner at all satisfactory, and that the attempt to transact it proves highly prejudicial to the general political and legislative business of the country.

"That the delay, vexation, and expense unavoidable in the present mode of transacting or endeavouring to transact such private business lays a heavy burden upon the parties applying for private acts, and on the parties opposing them."

The supposed difficulty which has heretofore stood in the way of every attempt to improve the system of private bill legislation has arisen from the assumed unwillingness of the legislature to abdicate any portion of its functions, or to transfer to any other tribunal powers which it had

ceased to exercise with credit to itself or advantage to the community. The framers of the document under consideration have endeavoured to maintain the consistency, and at the same time satisfy the constitutional prejudices, of the members of both houses in this respect, by explicitly declaring:—

"That it is nevertheless inexpedient, in a constitutional view, for parliament, or either of the houses thereof, to abdicate its functions and privileges in respect of private legislation; but, on the contrary, that both the houses ought jealously to retain their undoubted power of deciding upon every proposed enactment, and of assenting to or dissenting from such proposal."

The proposal to establish a tribunal auxiliary to parliament and without infringing on its privileges in regard to private legislation is thus stated:—

"That it is highly expedient that the said houses should obtain the aid of some other tribunal, which may enable them to transact the private bill business, both more expeditiously, more economically, and more satisfactorily, without at all infringing upon the undoubted privileges of parliament, or parting at all with the control of each house over each enactment.

"That, with this view, it is expedient to form a court or board apart from and independent of the High Court of Parliament, except as regards the removal of its members by a joint address of both houses.

"That this court or board shall consist of five members appointed by the Crown, and so paid for their services that the Crown may always obtain the aid of the most respectable members of the legal profession in constituting such board.

"That until it be seen how far the said number of commissioners may suffice, or may prove too great, it is expedient in the first instance, to appoint as two of the members of such court or board either Masters in Chancery or Commissioners of Bankruptcy, in order, that if it be found possible, the three permanently appointed should continue alone to cause an expense to the country."

Without staying to consider the constitution of the new board, which is open to some objection, we proceed to explain by a further extract the manner in which the newly created tribunal is to be put in motion, or, in other words, how the board is to be called upon to investigate the provisions of any bill, the extent of authority with which the members individually and collectively are intended to be invested, and the machinery by which the new tribunal is expected to perform its functions.

We subjoin the propositions embodying these particulars without comment or abridgment, and in doing so put our readers in possession of the entire document:—

“That each house, upon receiving any bill, and giving it a first reading, may refer it to the court before whom parties may be heard, and which shall have the power of a court of record with respect to oaths, process, and commitment, and the power of deciding all questions at law, subject to an opinion of one of the four courts in Westminster Hall, in case it shall think fit, and of calling in the aid of a jury on any disputed fact, provided both parties shall agree in asking such issue, and provided the court shall think fit to grant it.

“That each member of the court shall have power to try all matters, and go through the consideration of any bill, so as aforesaid referred by either house of parliament, and to reserve, if either party require it, and he think fit, any question for the opinion of the whole court, three whereof to be a quorum for this purpose, including the referring member of the court; and that any question being raised on receiving or rejecting evidence, such member may proceed to dispose of it himself, saving, if he think fit, the objection, as above provided, for the opinion of the court.

“That juries, if an issue be required and allowed as aforesaid, shall be taken from the special jury lists for the county of Middlesex, in such manner and subject to such challenge as in matters before the three courts of law of Westminster Hall.

“That each member of the board or court shall have the power of giving costs to or against any party at his discretion, and that no review of his order on this matter shall be permitted.

“That each member of the said board or court shall, at his discretion, and with the consent of all parties, issue a commission for the purpose of taking evidence as to any disputed matter of fact involved in any bill brought before such member, and that the whole expense of such commission shall be defrayed by the parties, under the direction of the member aforesaid.

“That the bill, having been fully examined by such court, or any member thereof, shall be reported to the house of parliament by which it had been referred, together with such alterations or additions as may have been determined upon as just, fitting, or expedient; and that the said house shall then proceed with the consideration of the bill so reported, and deal with it as such house shall think fit, either adopting the report, or rejecting it, or varying it, as to the wisdom of such house shall seem meet.

“That the only stage to be omitted by such house on passing such reported bill shall be the committee and the report.

“That if any party oppose such reported bill before either house, it shall be in the power of the house before which such opposition shall be offered to award the costs of resisting such

opposition to be paid by such opposing party to the other party or parties.

“That it shall be lawful for the court or board, by a majority of its members, to make rules and regulations for its proceedings, a copy whereof shall be laid before both houses of parliament within one week after their being framed, or, if in vacation time, within one week after the commencement of the ensuing session, and that such rules and regulations shall be deemed and taken to be valid for guiding its proceedings, unless either house of parliament shall make any resolution against them or any part thereof, which resolution shall be imperative on the said court or board, and new rules shall be made by it in compliance with such resolution; the new rules to be laid before both houses, as before, within one week after they are framed; and these new rules shall be valid to regulate the proceedings of the said court or board, unless and until a resolution of the other house shall disapprove thereof in whole or in part.

“That the court or board shall have the requisite number of registers and clerks to assist its members, under the superintendence of the Lords Commissioners of the Treasury.”

That a proposition of this nature should be entertained by either branch of the legislature, and find sufficient favour to be promulgated throughout the United Kingdom, under its sanction and with its authority, is itself matter of congratulation, from which we augur the best results. The subject is thus fairly propounded for consideration and discussion. Nothing more can be done or expected during the waning existence of the present parliament, but the question affords an encouraging field for useful exertion and honourable distinction upon the opening of a new parliament, when we may expect to see the whole subject submitted, without any unnecessary delay, to committees of both houses. The public inconvenience and injury, as well as the injustice to the profession, occasioned by permitting unqualified persons to act in the capacity of parliamentary agents, which is so pointedly and accurately stated in the address of “The Provincial and Metropolitan Law Association,”<sup>a</sup> will then be brought under the consideration of parliament, under circumstances which it is hoped will ensure all that the profession can desire—a fair and unprejudiced investigation. We shall take an early opportunity of returning to this subject, as we deem it second to none in its practical importance.

See *ante*, p. 46, sect. 8.

## THE OLD AND NEW LAW SOCIETIES.

### UNION OF TOWN AND COUNTRY SOLICITORS.

It must be gratifying to the promoters of the new Association of Town and Country Solicitors to find that the objects stated in the address to the profession are universally approved.<sup>b</sup> Some, indeed, are pleased with the plan as the supposed result of their own suggestions;—others see realized what they have long wished, but never expressed;—and numerous are the thanks given to the committee for their able and just statement, both of the public and professional grievances, in relation to the administration of justice. As, however, there must be an alloy in everything, finally comes a regret, and somewhat of a reproach, that a grave mistake has been made in connecting the operations of the new association with those of the long established "Incorporated Law Society."<sup>c</sup> And therewith is accompanied a repetition of the complaints which have occasionally been made against that society, not only for a supposed inertness on the one hand, but for a preference on the other of the interests of London over country solicitors.

Now, it may be of service to the promoters of the present movement, if, from means of information within our power, we offer some explanation of the true state of facts. In the outset, we beg it to be understood, that what we consider to be a gross mistake, leading to injurious *misrepresentations*, we do not ascribe to wilfulness, but to want of information. We cannot, however, acquit some of the opponents of the Law Society of deficient candour and fairness in their views; for had due inquiry been made into the grounds of complaint, they would be found to be vastly exaggerated, and many of them wholly without foundation.

It may not be unreasonable to inquire from whom these complaints come? Are they from persons who have rendered any service to the profession themselves, so as to justify their blaming those who have for many years, not only liberally contributed to professional funds, but have devoted, and continue to devote, much of their valuable

time, and to exert their influence in behalf of their brethren? or are the complainants well-informed of what has been done, or attempted? or are they acquainted with the impediments and difficulties in the way of success? We have frequently heard of complaints of matters about which we believe everything that ability, zeal, and judgment could effect, has been tried and without effect. Success has been deserved, but could not be commanded. We must not, however, protest altogether against the exercise of that "privilege of grumbling" which belongs of right to every Englishman, and which is, no doubt, occasionally useful in stimulating to further exertion, even those who have willingly and disinterestedly laboured for the general good. We have heard it said, moreover, that the profession resembles a rope of sand which it is impossible to unite, and if the Law Society were as inert as its opponents allege, it would be no inapt representative of the great bulk of its members. We do not, however, join in this view of the profession. We hope for better things. True it is, that on several occasions the appeals which have been made to the general body have not been promptly answered; but the explanation is evident:—each has relied on the exertions to be made by others, and whilst deeply engaged in his clients' interests, he has generally neglected his own. Now, however, he is "affected with notice" that the association expects "every man will do his duty," and we trust there will be a *general*, if not a *universal*, enrolment in the new association of every respectable practitioner throughout England and Wales.

The address appears clearly to explain the objects of the association, and the advantages proposed by uniting the solicitors both in town and country into one body. It does not appear that it will interfere either with the Incorporated Law Society in London, or with the various Provincial law societies. It is designed for the purpose of *uniting the whole body for the common advantage of its several parts*. Hitherto, each great section has acted separately. It was erroneously supposed that they could not be consolidated. It was alleged, indeed, by some who ought to have known better, that the London solicitors selfishly attended only to their own exclusive advantage. Now, so far from this being the case, the founders of the Law Institution, at the time it was first projected in 1823,

<sup>b</sup> See p. 41, *ante*.

<sup>c</sup> This, as we understand, is the only doubt or difficulty suggested in the *Law Times*.

proposed that the body should consist of attorneys as well in the country as in town.<sup>d</sup> Again, on applying for its charter, in 1831, the society comprehended within it, the whole of that branch of the profession, not only the solicitors of England and Wales, but also of Ireland and Scotland, and such are the provision in the present charter. The Incorporated Society has, indeed, always promoted communications with the provincial law societies, and when the latter proposed a more decided union of interests, the former readily lent their aid, so far as was consistent with the constitution of the society. It is remarkable that of the 3,000 London solicitors nearly 1,100 have joined the Incorporated Society; but of 7,000 in the provinces the number is less than 300. It seemed therefore desirable that some new efforts should be made for bringing the whole under one bond of professional fellowship.

The great mistake which has been made by some recent writers is that of promoting mainly the union of the *country* solicitors, as distinct from the London practitioners. One of our contemporaries has laboured long and energetically for this purpose, and we have reason to believe he has considerably retarded the true principle of union amongst that branch of the profession whose interests he has undertaken to advocate.<sup>e</sup> We must not, however, ascribe the whole of the disunion to his agency, because we are aware that there previously existed much prejudice, of which we had sufficient evidence many years ago, when this work was the sole means of communication amongst members of the profession throughout the country.

No doubt the relation of country attorney and town agent gave rise to the notion that their pecuniary interests were

somewhat at variance. Some also of the modes of practice were different, and each thought their own the better; but these circumstances ought evidently not to form any ground for either class to neglect what is beneficial to both. Even in London there was a time, not beyond the memory of some living practitioners, when the solicitors in the City, and those located about the Inns of Court and at the west end looked with jealousy upon each other,—differing occasionally in habits of business and rules of practice, which were rigidly enforced by some and relaxed by others. These east and west estrangements have long ceased to exist, and are matters of tradition only to the present race of practitioners. So we trust will be, ere long, the supposed adverse feelings and interests of the metropolitan and provincial profession. The frequent and rapid *personal* communication throughout the kingdom which now takes place cannot fail to promote this desirable end, and the new association will doubtless accelerate and confirm it.<sup>f</sup>

When speaking of the union of professional men, it may not be inappropriate to observe that *the bar* is much more socially united than the solicitors. Besides their Inns of Court, to one of which every member of course necessarily belongs, there is a voluntary club on every circuit, familiarly called “the bar mess.” The attorneys very sparingly congregate in the same manner. There are, indeed, the Inns of Chancery, of which the majority are at-

<sup>f</sup> Our contemporary gives a conjectural account of the interview between the provincial deputation and the council of the Incorporated Law Society, accompanied by some imaginary details, written no doubt *currente calamo*, and not in the best taste in regard to gentlemen of great eminence in their profession and of the highest respectability. The address of the committee which has been so generally approved, states all that is necessary to say on this subject. “The committee (they say) have had interviews with the council of the Incorporated Law Society, and with the committees of many of the provincial law societies, and as the objects of the association are just in themselves, tend to the public good in the due administration of justice, and are, moreover, calculated to promote the usefulness and respectability of the profession; they have received assurances that the present association will have the cordial co-operation of all the existing societies.” The extract which we gave last week from the annual report of the Incorporated Law Society, satisfactorily disposes of any question of rivalry or disagreement between the two societies. See p. 69, *ante*.

<sup>d</sup> It was arranged that the town members should pay 3*l.* annually, and the country members 2*l.*, and the sum was reduced in the year 1837 to 1*l.*, whilst that of the London members was not reduced till 1845 to 2*l.* Originally the capital was raised by shares of 25*l.* each; but the members have liberally relinquished their individual rights, and vested their property in the corporate body. Members are now admitted on paying an entrance fee of 15*l.*, but this sum with regard to country members has been reduced to 10*l.*, subject to the confirmation of another general meeting.

<sup>e</sup> Even now our contemporary is projecting a Country Solicitors' Club to be formed in London, and inviting the names of subscribers to be sent to him.

torneys, but we believe the members of those inns do not exceed 2 or 300 in the whole. So the old Law Society, which was established in 1739, soon after the attorneys were partially excluded from the Inns of Court, never exceeded that number; and the Northern Agents' Society was less than 100; neither did the Metropolitan Law Society, established in 1819, ever muster so many as 300: even in the Incorporated Society, which absorbed all the others, there was for a long time only about the same number; yet to show the zeal with which it was founded, we may mention that 30,000*l.* was subscribed by less than 200 members towards the purchase of the land and the erection of the hall and library in Chancery Lane. Gradually year by year the number has increased, until it now includes nearly half the London practitioners. It is no small merit on the part of the latter that so large an association has been formed. In the country, we fear, a very small proportion of the whole body (not, we believe, one-fifth) are members of any law society or law library.

With reference to the new association, it should be recollected that it is impracticable to unite the various local societies, composed of individuals, with a society incorporated by royal charter. "The Society of Attorneys, Solicitors, and Proctors practising in the Courts of Law and Equity in the United Kingdom," (as it is formally designated), could not, consistently with its constitution, form a component part of an association of individuals, all of whom are eligible, but few comparatively are members of the corporation. So far as we can at present anticipate the operations of the two societies, it is better, we think, that each should pursue its own course, independently of, but acting with a friendly feeling towards, each other.

The merit of forming and establishing the association belongs, of course, to the influential persons with whom it originated. We claim no other share in the good work than that of having been somewhat instrumental in preparing the way by affording the opportunity of communication amongst members of the profession in all parts of the kingdom. The honour of effectually serving their profession, belongs to the founders of these societies and the leading members of their committees, who devote their invaluable time and earnest attention to the measures confided to their care and superintendence. Without them, in vain

would be the lucubrations of writers, however ready their pens, however great their zeal, or extensive their learning. But to be useful in the cause in hand, there must be full information of the true interests to be promoted, and the ultimate ends to be attained,—a perfect knowledge of the resources to be employed and the impediments to be overcome; and every step must be taken under the guidance of sound discretion.

## RAILWAY LAW.

### ACTIONS BY AND AGAINST ALLOTTEES.

SINCE our last publication, the Court of Queen's Bench has pronounced its judgment in the case of *Woolmer v. Toby*, to which we then alluded. The single ground upon which the decision of the court proceeded did not render it necessary to enter upon any very minute investigation of the principles applicable to cases of this description; but the result is so far satisfactory, that it cannot be considered as at variance in any respect with the judgments of the Court of Exchequer in *Walstab v. Spottiswoode*, or the Court of Common Pleas in *Wontner v. Shairp*, which were severally the subject of a recent commentary.<sup>s</sup>

*Woolmer v. Toby*, as many of our readers are aware, was the converse of *Walstab v. Spottiswoode* and *Wontner v. Shairp*. It was an action by the chairman and others composing the committee of management of the Direct Exeter, Plymouth, and Devonport Railway Company, to recover from an allottee the amount of deposits payable upon certain shares allotted to him. The action was tried at Exeter, before Baron Rolfe, at the Spring Assizes of 1846, when a verdict was taken for the plaintiff. A rule was afterwards obtained to set aside the verdict and enter a nonsuit, or for a new trial. The case was fully argued during Easter Term last, and a great variety of objections taken on the part of the defendant, but the decision of the court turned on the single point, that the parties who brought the action were not those with whom the defendant had contracted. In the prospectus which was produced on the trial there appeared the names of certain persons as forming the provisional committee. The defendant seeing that prospectus with those names, applied for shares

<sup>s</sup> See *ante*, p. 92.

in the undertaking, promising to pay the deposit on all shares which the committee might allot to him. After a considerable interval, an answer was sent to the defendant, stating that certain shares had been allotted to him. Upon this document it was alleged that the contract was complete, and that the defendant had undertaken to pay the deposits. Between the time of the application and the allotment several of the committee retired, and some new members were added to the committee. The constitution of this body, therefore, had changed, and it was urged on behalf of the defendant that in a case of this kind the names of the committee had a considerable influence on the minds of the public, who built their faith upon the respectability of those parties, and that some of them having retired, the defendant ought to have had an opportunity afforded to him of disclaiming or confirming his original application. The court considered that this change of committee-men altered the circumstances, and that the objection was valid, because the parties now forming the committee were not those with whom the defendant originally intended to contract. The body of directors allotting were not in point of fact the same body to whom the defendant had addressed his application for shares. Upon this ground the defendant was entitled to have a nonsuit entered. It was also insisted during the argument, that the learned Baron who tried the cause misdirected the jury by advising them that the interval which had elapsed between the application for shares by the defendant and the allotment to him was not an "unreasonable" time. On this point the court entertained a strong opinion, but as the objection only pointed at a new trial, and the defendant was entitled to have a nonsuit entered, it was unnecessary for the court to pronounce any judgment on this or the other objections taken by the defendant's counsel. Although the question at issue was thus narrowed, we apprehend that the same state of facts upon which this decision rests will be found to exist in many cases. The instances, perhaps, have not been very numerous in which there was no alteration in the constitution of a provisional committee between the period when the project was first announced with the names of the provisional directors and that advanced stage when the shares were actually allotted.

The case of *Vollans v. Fletcher*, noticed at the time it was tried, has also been de-

termined during the present term. This was an action by an allottee against the chairman of a managing committee, to recover back deposits paid by him upon an allotment of shares in a proposed railway company which was afterwards abandoned. It was admitted that the case was not distinguishable in fact, or upon principle, from that of *Walstab v. Spottiswoode*, but the plaintiff, in order to establish his case at the trial, having tendered in evidence a letter of application for shares from the plaintiff, and a letter of allotment, which varied but little from the usual form, it was insisted by the defendant's counsel that these documents taken together constituted an agreement the matter of which was above the value of 20*l.*, and required a stamp. The Lord Chief Baron gave effect to this objection at the trial, and the plaintiff was nonsuited, leave being reserved, however, to move to set aside the nonsuit and enter a verdict for the plaintiff, if the court should be of opinion that, under the provisions of the Stamp Act, (55 Geo. 3, c. 184, sched. part 1,) the letter of application and letter of allotment were admissible without a stamp. A rule having been obtained accordingly, after argument, the Court of Exchequer held, that the application and letter of allotment were admissible in evidence without a stamp, as they did not amount to an agreement, or "evidence of a contract," within the meaning of the Stamp Act. The letter of allotment contained stipulations not contemplated in the letter of application, and it was quite clear that upon the receipt of the letter of allotment, the plaintiff might have declined to take any shares. The letter of allotment, therefore, was in the nature of a mere unaccepted proposal, and did not amount to an agreement.<sup>a</sup> It was said the plaintiff afterwards paid money by way of deposit into the bankers of the company, pursuant to the conditions contained in the letter of allotment, and that it might be inferred from this act he had adopted the contract proposed by the letter of allotment. Assuming the payment of money to be an adoption of the stipulations contained in the letter of allotment, the payment was an act, and not an agreement in writing, which was what the Stamp Act contemplated and required to be stamped. Upon these considerations, the court thought the letters admissible without a stamp, and di-

<sup>a</sup> See *Penniford v. Hamilton*, 2 Stark, 475; *Drant v. Brown*, 3 B. & C. 666.

rected the nonsuit to be set aside, and a verdict entered for the plaintiff for the amount claimed.

Both the cases now referred to have followed what may be regarded as the general rule, in respect to the early decisions at *nisi prius* in railway cases,—they have been overruled,—and it is hoped, did not, by misleading, injuriously affect the interests of individuals to any serious extent.

## COMMON LAW PRACTICE.

### CERTIFICATE FOR COSTS UPON INQUIRY BEFORE THE UNDER-SHERIFF.

WHERE the defendant suffered judgment by default in an action on the case for a malicious prosecution for felony, and a writ of inquiry was executed before the under-sheriff of Wilts, on which the jury assessed the damages at 1*l.* 1*s.*, and the under-sheriff certified, under the stat. 3 & 4 Vict. c. 24, s. 2, that "the grievance was wilful and malicious," so as to entitle the plaintiff to costs, the question was mooted, in whose name the certificate should be made.<sup>1</sup> The statute empowers "the judge or presiding officer before whom such verdict shall be obtained," to certify on the back of the record, or on the writ of trial, or writ of inquiry, and as it appeared that the judge who actually presided at the inquiry in this case was the under-sheriff, it was contended that the certificate ought to be signed by that officer in his own name, and not in the name of the high sheriff, as had been done in the case referred to.

The Court of Common Pleas, however, was clearly of opinion that the inquisition was properly returned in the name of the sheriff.<sup>k</sup> The writ was directed to the sheriff, and must necessarily be returned in his name, and there was no reason why an intermediate proceeding should be vouched by the name of a third person altogether a stranger to the record. The sheriff is the only person recognised by the court, though the under-sheriff is a well-known officer, and there would be no authority for a certificate in the name of the under-sheriff. A rule to set aside the

certificate, on the ground that it purported to be signed by a person before whom the cause was not tried, was for these reasons discharged with costs.

The decision of the Court of Common Pleas was recognised and adopted by the Court of Queen's Bench in a case of *The Queen v. Schlesinger*, determined during the present term.<sup>1</sup> This was an indictment for perjury, committed upon a trial which took place in point of fact before the secondary, but which was alleged in the indictment to have taken place before the sheriffs of London.

After a verdict for the crown, the objection was taken in arrest of judgment, that the indictment should have stated that the issue came on to be tried before the secondary, and not before the sheriffs; but the court held, upon the authority of the cases above referred to, that the sheriffs having power to appoint a secondary, and having exercised that power, the proceedings before the secondary were properly alleged to be proceedings before the sheriffs, and therefore overruled the objection.

It may be considered as settled practice, therefore, that a proceeding is not improperly said to have been taken before the sheriff when the under-sheriff officiates for the principal officer.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### INCLOSURE OF COMMONS.

10 VICT. c. 25.

An Act to authorize the Inclosure of certain Lands, in pursuance of the Second Report of the Inclosure Commissioners for England and Wales. [11th May, 1847.]

1. 8 & 9 Vict. c. 118.—*Inclosures mentioned in schedule may be proceeded with.*—Whereas the Inclosure Commissioners for England and Wales have, in pursuance of an act passed in the 8 & 9 Vict. c. 118, intituled "An Act to facilitate the Inclosure and Improvement of Commons and Lands held in common, the Exchange of Lands, and the Division of intermixed Lands; to provide Remedies for defective or incomplete Executions, and for the Non-execution of the Powers of general and local Inclosure acts; and to provide for the Revival of such Powers in certain cases," issued provisional orders for and concerning the several proposed inclosures mentioned in the schedule to this act, and have, in the annual general report of their proceedings, certified their opinion

<sup>1</sup> *Stroud v. Watts*, 2 Com. B. 929; 15 Law J. 196.

<sup>k</sup> The authorities referred to in the judgment of the court were,—*Plowd.* 63 *a*; *Com. Dig. tit. Viscount*; and *The Queen v. Dunn*, 2 Moody C. C. 297.



that such inclosures would be expedient; but the same cannot be proceeded with without the authority of parliament: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the said several proposed in-

losures mentioned in the schedule to this act be proceeded with.

2. *Short title.*—And be it enacted, That in citing this act in other acts of parliament and in legal instruments it shall be sufficient to use the expression "The Annual Inclosure Act, 1847."

THE SCHEDULE TO WHICH THIS ACT REFERS.

Inclosure.	County.	Date of Provisional Order.
Welland . . . . .	Worcester . . . . .	30th June, 1846.
Harden Moor . . . . .	York . . . . .	9th July, 1846.
Newbold-on-Stour . . . . .	Worcester . . . . .	11th July, 1846.
Wilburton Open Fields . . . . .	Cambridge . . . . .	21st July, 1846.
Elmton . . . . .	Derby . . . . .	28th July, 1846.
East Coanwood . . . . .	Northumberland . . . . .	28th July, 1846.
Dippenhall . . . . .	Southampton . . . . .	29th July, 1846.
Evenjobb . . . . .	Radnor . . . . .	25th August, 1846.
Wentnor . . . . .	Salop . . . . .	11th September, 1846.
Buckland St. Mary . . . . .	Somerset . . . . .	11th September, 1846.
Brough and Shatton Common . . . . .	Derby . . . . .	11th September, 1846.
Whitrigg Marsh . . . . .	Cumberland . . . . .	23rd September, 1846.
Norbury Hill . . . . .	Salop . . . . .	25th November, 1846.
Wishaw, Upper & Lower Greens . . . . .	Warwick . . . . .	3rd December, 1846.
Bordley Intack . . . . .	York . . . . .	10th December, 1846.
Netteswell . . . . .	Essex . . . . .	10th December, 1846.
East Cotham Common . . . . .	York . . . . .	10th December, 1846.
Whitnash . . . . .	Warwick . . . . .	23rd December, 1846.
Washington Commons . . . . .	Sussex . . . . .	8th January, 1847.
Goldington . . . . .	Bedford . . . . .	8th January, 1847.
Tadley . . . . .	Southampton . . . . .	23rd January, 1847.

SHORT NOTICES OF NEW BOOKS.

A TREATISE on the Pleadings in Suits in the Court of Chancery, by English Bill. By John Mitford, Esq., (the late Lord Redesdale.) The 5th edition, comprising a large body of additional notes by Josiah W. Smith, B. C. L., of Lincoln's Inn, Esq., Barrister-at-law. London: Stevens & Norton. 1847. Pp. liv. 477.

We are glad to see a new edition of this excellent and standard work. The new editor is well and favourably known to the profession as the author of a Treatise on Executory Trusts, and the editor of Fearn's Contingent Remainders. We shall endeavour to find an opportunity for noticing Mr. Smith's additions to the notes, which are distinguished by a convenient plan from those of former annotators, and appear to us to be very valuable.

A Selection of Leading Cases on Pleading and Parties to Actions, with Practical Notes, elucidating the Principles of Pleading (as exemplified in cases of most frequent occurrence in practice), by a Reference to the earliest

Authorities, and designed to assist both the Practitioner and the Student. By W. Finlason, Esq., of the Middle Temple, Special Pleader. London: Stevens & Norton. 1847. Pp. xxiv., 271.

This is a useful book on an important subject after the manner of the late Mr. Smith's "Leading Cases."

A Practical Treatise on the Law of Partnership; including the Law relating to Joint-Stock Companies: with an Appendix of Precedents, Forms, and Statutes. By Andrew Bisset, of Lincoln's Inn, Esq., Barrister-at-Law. London: Stevens & Norton. 1847. Pp. xxxiii., 356, 279.

This is another contribution to the large stock of treatises on the Law of Partnership. Considering the recent cases arising out of the railway and other joint-stock transactions, bearing on the Law of Partnership, it is not to be wondered at that new writers should enter the field, and we think there is much merit in Mr. Bisset's work.

A Digest and Index of all the Statutes.



Part the Fourth, bringing the Statutes and Decisions thereon down to the end of the last Session. To which is added a General Index of the four parts. By George Crabb, Esq., of the Inner Temple, Barrister-at-Law. London: Maxwell & Son. 1847. Pp. xvi., 487.

This is a very useful addition to Mr. Crabb's elaborate Digest of the Statutes, and his collection of the cases decided on the construction of this vast mass of legislation is of the greatest value to the practitioner.

The Statutes and Orders relating to Practice and Pleading in the High Court of Chancery, from 1813 to Easter Term, 1847. Classified according to the Respective Proceedings in a Suit; with a Time Table and Notes. By Samuel Simpson Toulmin, Esq., of Gray's Inn, Barrister-at-Law. London: S. Sweet. 1847. Pp. 388, xxiii.

This is a very useful collection of Statutes and Orders relating to Equity Practice and Pleading. The modern editions of Chancery Orders have usually commenced with the year 1828, but Mr. Toulmin goes back to 1813. The work must be acceptable to both branches of practitioners, and the author is no doubt well qualified for his task,—having practised as a solicitor for many years, though now a member of the bar.

Familiar Exercises between an Attorney and his Articled Clerk, on the General Principles of the Laws of Real Property, being the first book of Coke upon Littleton, reduced to the Form of Questions. To which is added the original Text and Commentary; and an Appendix containing some of the Recent Real Property Acts of 3 & 4 W. 4, with interrogatories applicable to them. By Francis Hobler, Attorney-at-Law. 3rd edition. London: Benning & Co. 1847. Pp. xvi., 346.

We are glad to see a new edition of this little book, which is particularly useful to students, and Mr. Hobler, by its publication, has added to his reputation as a learned and respectable practitioner.

Draft of an Act of Parliament, consolidating the whole of the Statute Law in one Act, humbly submitted to the consideration of Her Most Gracious Majesty and the Two Houses of Parliament. London: Butterworth. 1847. Pp. 162.

Our law reformers, now a very numerous class, must be attracted with some curiosity to witness an attempt at the consolidation of all our statutes at large in one act!

Manual of the Law of Scotland. By John Hill Burton, Advocate, Author of a Treatise

on the Law of Bankruptcy, Insolvency, and Mercantile Sequestration in Scotland. 2 vols. Second edition, enlarged. Vol. 1: Public Law,—Legislative, Municipal, Ecclesiastical, Fiscal, Penal, and Remedial, with a Commentary on the Powers and Duties of Justices of the Peace and other Magistrates. Pp. 437. Vol. 2: The Law of Private Rights and Obligations. Pp. 506. Edinburgh: Oliver & Boyd. 1847.

Looking at the increased and increasing communications between England and Scotland, the present work has been opportunely published. The subjects comprised within it are well arranged and concisely and ably stated.

A Treatise on the Principles relating to the Specification of a Patent for Invention; showing the Standard by which the sufficiency of that Instrument is to be tried. By William Spence, Assoc. Inst. C. E., Patent Agent. London: Stevens & Norton. 1847. Pp. v., 188.

Seeing the changes which have taken place in professional practice,—large portions of it annihilated, and others materially diminished, we think it would be only just and proper that all business, even though not strictly appertaining to the courts, which barristers and attorneys in their several vocations might undertake, should be confided to them. We think the law officers of the crown ought not to permit any but attorneys to practise or come before them on matters relating to patents. The present work is the compilation of a patent agent, who may be an able engineer, and very competent to treat of new inventions as matters of science, but treatises on the law and practice relating to patents should, we think be confined to members of the legal profession.

## FORM OF RULES FOR PROVINCIAL LAW SOCIETIES.

It being desirable at the present time to assist in the formation of new provincial law societies, we subjoin the rules which have been mainly adopted in several of the existing law societies.

1. This society consists of attorneys and solicitors, residing in the county or city of \_\_\_\_\_ admitted in pursuance of and acting agreeably to the following rules of The Law Society.

2. The principal objects of the society are to preserve the rights and privileges, and support the respectability of attorneys, to promote fair and liberal practice, and prevent abuses in the profession, and to adopt such measures as may

appear best calculated to effect these ends, and most likely to secure respect to the practitioners and to be of advantage to their clients.

3. Persons to be proposed as members shall be nominated and seconded by two members at a general meeting, and shall be balloted for at the next general meeting, provided there shall be five members present, and the assent of two-thirds of the members present shall be requisite to make an election.

4. All members shall continue subject to the rules of this society, until they severally desire to withdraw from the society, and signify the same in writing, to be presented at a general meeting.

5. A general meeting of the society shall be held in the first week of the assizes, at such time and place as the president of the last preceding meeting shall appoint; and notice thereof shall be given in some of the county papers.

6. The officers of the institution shall consist of a president, vice-president, secretary, and treasurer. The election of the officers of the society shall be by ballot at general meetings. The president and vice-president shall enter upon their offices at the spring assizes on each year, and continue in office for one year. The vice-president shall be chosen annually at the spring general meeting, and shall succeed to the office of president for the ensuing year without further election, and the treasurer and secretary shall continue in office during the pleasure of the society.

7. Each member upon his admission shall pay one guinea as his subscription for the current year, and shall at every ensuing spring assizes, pay one guinea for the benefit of the society, out of which all incidental expenses shall be paid, and the surplus become a part of the fund or property of the society, to be applicable for the general objects of the society, and for such other purposes as the majority of the members at any general meeting shall direct.

8. The secretary shall write to the several members, whose subscriptions are unpaid after the summer assizes in each year, and request the immediate payment thereof, and in case the annual subscription of any member shall be in arrear for the space of three years, such person shall no longer be considered a member of this society, but his name shall be erased from the list of subscribers. Any member whose name shall have been erased from the list of subscribers by virtue of the foregoing rule, may be re-admitted in the usual manner, on payment of the arrears of his subscription.

9. The treasurer's accounts shall be audited annually at the spring assizes, and the state of the funds of the society, together with a list of the members and benefactors, shall be printed, and distributed amongst the members as soon as may be after every audit. All disbursements shall be directed by the committee and paid by the treasurer.

10. Two-thirds of the members present at any general meeting (not less than fifteen being present) shall have power to expel any member

of the society for what, in their opinion, shall appear to be improper conduct or practice in his profession.

11. There shall be a general committee for the purpose of watching over the interests and promoting the objects of the society in the intervals between the general meetings, who shall report their proceedings to every general meeting; such committee to consist of the president, vice-president, treasurer and secretary, who shall be members thereof, *ex officio*, together with one or more members of the society, in each market town in the county, to be annually chosen at the spring general meeting, and five of such committee shall have power to act, and any three of whom shall be competent to audit the treasurer's account, and if no other or new committee be then chosen, the existing committee shall continue to act until such other or new committee be chosen.

12. When any member shall intend to propose a new law, or the repeal or alteration of an existing law, he shall give notice at a general meeting, but such notice shall not be necessary in case such new law or repeal or alteration shall be proposed by the general committee. In all cases the secretary shall communicate the substance of such intended proposition to every member by a circular letter, not less than fourteen days previously to the general meeting at which it is to be brought forward.

## QUESTIONS AT THE EXAMINATION.

*Trinity Term, 1847.*

### I. PRELIMINARY.

Where, and with whom, did you serve your clerkship?

State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

Mention some of the principal law books which you have read and studied.

Have you attended any and what law lectures?

### II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

How has the act of 3 & 4 Vict. c. 24, affected actions of trespass on the case?

What is the course of proceeding requisite to prevent the Statute of Limitations running against a debt?

How soon may the successful party enter up judgment after trial? mention the different periods?

What are now the several periods of limitation for the recovery of different kinds of debts?

Within what time must a motion be made to set aside an award?

What is the present practice on cross issues as to costs, and what must be sworn in the affidavit of increase for the party having the general costs, and what for the party having

succeeded on some of the issues to get the allowance for their respective witnesses?

Is it necessary in any and what cases previous to the commencement of an action to make a request or demand or give notice to the opposite party for completing the cause of action?

What is required to enter judgment on a warrant of attorney above one year and under ten years, and what above ten years?

By what course of proceeding is secondary evidence made admissible?

What costs is a pauper entitled to if he recovers a verdict, and what is he liable to pay if the verdict is against him?

In an action upon a deed where the execution is required to be proved and the attesting witness is dead, how is the plaintiff to prove the execution?

To what dilapidations is a tenant from year to year liable in respect of a messuage so let to him?

How would proceedings be affected by death of a plaintiff after declaration and issue? And how after trial and before judgment? And how after judgment and before execution? And what must be done in consequence?

Must a notice to quit be in all cases in writing, and at what period should it be given and expire?

In what cases may the judge certify to deprive the plaintiff of costs? And when and how must his certificate be obtained?

### III. CONVEYANCING.

State briefly the different kinds of estates of freehold and estates less than freehold.

State briefly the different titles or tenure under which real estate is ordinarily acquired, and the deeds or assurances by which it is now ordinarily conveyed by vendors to purchasers.

What was formerly considered a sufficient title to an estate in fee simple; and has any, and what, change taken place, and by what act or acts within the last 20 years to simplify and shorten titles with reference to length of possession?

State briefly what you consider to have been the *intention*, and what the effect, of the Statute of Uses?

A. contracts to hold Black Acre to the use of B., to the use of C. What is the effect of such a limitation, and what are the respective interests of B. and C. resulting therefrom?

Explain the nature and operation of the conveyance long in general use, viz. lease and release.

As the law now stands, is the mere delivery of a deed of conveyance sufficient to pass the freehold of the land comprized therein without livery of seisin or other formality; and what are the words of the statute 8 & 9 Vict. on that point?

Before the 3 & 4 Will. 4, c. 74, whose concurrence was necessary to enable a tenant in tail in remainder expectant on an estate of freehold to bar the entail? and whose concurrence is now necessary for the same purpose?

What is a base fee? How is it created, and what its effects and operation?

As the law now stands, are trustees to preserve contingent remainders necessary? Explain their use in settlements.

What is the present law as to satisfied terms; and what do you consider the proper practice as to assigning them or not, and why?

By what title can a copyholder acquire, and by what assurance or assurances can he pass his estate to a purchaser or mortgagee, and is there any, and what difference in the form of assurance to a purchaser or mortgagee?

State the law against perpetuities, and what is the present restriction on accumulations of income?

A lady seised of freeholds, possessed of personality, and with various debts owing to her, marries. What interest and control does her husband acquire by marriage in and over the freeholds, personality and debts owing respectively during the coverture, or in the event of their having no child, and his surviving her?

Explain the doctrine of "*possessio fratris*." Has the Law of Descents with reference to the half-blood undergone any recent change?

### IV. EQUITY AND PRACTICE OF THE COURTS.

What is the difference between the remedy afforded by the jurisdiction of Courts of Equity, and that by the Common or Statute Law, as respects matters in contract?

What are the principal matters in which courts of equity have practically exclusive jurisdiction and power to afford relief?

In what cases have courts of equity either no jurisdiction, or decline to exercise it?

What are the principal maxims or rules which govern courts of equity?

What are the several courts of equity, and what appeals lie from them respectively?

What is the course of proceeding to obtain relief in equity?

What time is allowed for answering original bills, and before whom can answers be sworn?

What advantage in respect of evidence has a plaintiff in equity compared with one at common law?

What is meant by the adjustments between creditors and legatees, and between debtors and creditors, made by courts of equity, and commonly called marshalling of assets and of securities?

Is a creditor entitled to any, and what costs, of establishing his debt before the Master?

What is the first usual proceeding in the Master's office after the copy title and ordering part of decree have been left; and what is done thereupon?

What evidence can be received by the Master after issuing warrants on preparing his report.

Is any, and what security required from a receiver in a suit; and what are the duties of a receiver.

Will the court appoint a guardian and

maintenance for an infant without suit, in any and what cases?

What does the Accountant-General require to authorize him to transfer stock out of court.

#### V. BANKRUPTCY AND PRACTICE OF THE COURTS.

What are the facts to be proved in order to obtain an adjudication of bankruptcy?

Is any, and what protection afforded by commissioners of bankruptcy, and under what authority, to persons who are not traders, or being traders, owe a limited and what amount, and how is such protection to be obtained, and under what authority?

If a member of parliament be liable to the Bankrupt Laws, what proceedings must be taken against him?

What are the consequences to a member of parliament found bankrupt?

By what means since the abolition of arrest can a compulsory act of bankruptcy be obtained?

If the petitioning creditor's debt should be insufficient, is the fiat void, or what course can be adopted to sustain it?

By whom are assignees chosen, and is there any and what power of setting the choice aside?

What is the effect of the bankruptcy with regard to debts due to the crown?

How do corporate bodies and public companies not incorporated prove their debts?

Can a creditor who has an equitable mortgage prove his debt under any and what circumstances?

State the rules regarding the bankrupt's leasehold property at the time of his bankruptcy; when may a claim be entered instead of the proof of a debt?

Is there any and what property in the bankrupt's possession at the time of his bankruptcy which will not pass to his assignees?

To what property accruing to the bankrupt after the fiat are the assignees entitled, under any and what circumstances?

Is there any protection, and to what extent, of a purchaser from a bankrupt, where such purchaser is unacquainted with the commission of an act of bankruptcy?

What is an election by the assignees to take premises held by the bankrupt at the time of his bankruptcy?

#### VI. CRIMINAL LAW AND PROCEEDINGS BEFORE MAGISTRATES.

State the distinctions between murder, manslaughter, and homicide.

The like between felony and misdemeanor.

What offences are usually tried before the courts of quarter session, and what offences cannot be tried before them?

What is burglary, and what is housebreaking?

What buildings are to be considered part of a dwelling-house in burglary and stealing from a dwelling-house?

Is it burglary to break and enter a shop,

warehouse, or counting-house, and stealing therein any chattel, money, or personal security?

What effect has a conviction of felony on the real and personal property of the party convicted?

To what extent have justices jurisdiction, in cases of personal assault, and under what circumstances is such jurisdiction taken away?

To what extent have they jurisdiction in trespass to real or personal property, and when taken away?

What evidence is now necessary to obtain an order of affiliation in bastardy, against the putative father?

For what can sureties be required of a person for good behaviour?

What are the different modes by which a parochial settlement can now be gained?

If a person, resident in a parish where he is not legally settled, applies for parochial relief, what is the proper course to be pursued, to ascertain the place of his legal settlement? and when ascertained, under what authority and by whom is he taken; and if that parish intend to dispute the alleged legality of the settlement, before what tribunal is it to be tried? And is there any appeal against its decision?

Is a witness in a criminal matter entitled, before leaving home, to be paid his travelling expenses and for his loss of time?

In what cases of misdemeanor are prosecutors at the assizes or sessions entitled to their costs?

#### ADMISSION OF SOLICITORS AT THE ROLLS.

THE Master of the Rolls has appointed Wednesday, June 9th, at the Rolls Court, Chancery Lane, at a quarter past three in the afternoon, for swearing solicitors.

Every person desirous of being sworn on the above day must leave his Common Law Admission or his Certificate of Practice for the current year at the Secretary's Office, Rolls Yard, Chancery Lane, on or before Tuesday, June 8.

#### RESULT OF THE EXAMINATION.

THE newspapers report a very large increase of attorneys this Term. The true numbers at the recent examination are as follows:—93 passed, 7 postponed, and 2 still under consideration.

We regret to hear that the answers of one of the candidates were palpably copied from another. They were both subsequently called before the examiners at a special meeting, and unavoidably rejected. We trust this will operate as a warning to future candidates, and these gentlemen, when they make their appearance again, cannot fail to be looked at with suspicion.

## COUNTY COURT DECISIONS.

## BRISTOL DISTRICT.

A CORRESPONDENT at Bristol has properly called our attention to the judgment delivered on the 27th May, by Arthur Palmer, Esq., judge of the Small Debts Court there.

The case was as follows :—

“William Lewellyn, the plaintiff, is a boot-maker, and sued Edmund Sparshott Willett, the defendant, for a sum of 17l. 7s. 6d., being a portion of a very much larger amount.”

The solicitor who appeared for the defendant, objected to the account, as being contrary to the provisions of the act, which by clause 63 provides as follows :—

“That it shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said courts, but any plaintiff having cause of action for more than twenty pounds, for which a plaint might be entered under this act, if not for more than twenty pounds, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding twenty pounds; and the judgment of the court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly.”

He contended that the defendant could not recover in that court without he consented to abandon the excess.

His Honour, the judge, however, directed, that this was not a division of any cause of action. But, on the contrary, that every pair of boots which the plaintiff sold the defendant was a separate cause of action in itself, and that the plaintiff could, if he chose, maintain a separate action and recover for every separate pair of boots he sold defendant. The learned judge, it appeared, expected this point to be raised, and was fully armed with cases. These he cited with overwhelming effect, to the surprise evidently of the solicitor for the defendant. The latter asked his Honour whether supposing one party owes another 100l. for goods which have been supplied him by the plaintiff at various times by small items, he was of opinion that the plaintiff could proceed in this court and recover debt and costs for every particular item, thereby giving rise to a multiplicity of actions, which could be rendered a monstrous injustice by an evil-disposed plaintiff. His Honour stated it to be his opinion, “That the Small Debts Act comprised every transaction to any amount which took place in the city of Bristol in any retail trade. The wholesale houses who sell a quantity in one lot only being exempt.”

[We certainly doubt the soundness of this decision, and at all events think that where there is an express or implied credit for a year, or a less period, the action must include all the items within such period, and cannot be split.—Ed.]

## REMAINING ACTIONS IN OLD COUNTY COURTS.

There were several actions commenced and now remain undetermined in the Old County Court, and a great number of them were set down for trial; but the county clerk, who is also the under-sheriff, conceived that as the New County Court had come into operation, his duties as county clerk were at an end, and that he had no power to proceed with the actions, therefore they ought to be transferred to the New County Court.

How, and in what manner, are the parties to the above actions to proceed? Is not the county clerk bound to continue the old court until all the proceedings therein are brought to a close and terminated? and may an action be brought in the New County Court on judgments obtained in the old? and can the county clerk now legally issue *alias* executions on judgments signed by him?

A SUBSCRIBER.

## APPOINTMENTS UNDER THE COUNTY COURTS ACT.

An address has been moved by Sir F. Thesiger for a return of all the judges, clerks, and other officers appointed under the act 9 & 10 Vict., c. 95, intitled “An Act for the more Easy Recovery of Small Debts and Demands in England;” and of the courts to which they have been respectively appointed, distinguishing in such return the judges, clerks, and other officers who have been newly appointed under the said act, from the judges, clerks, and other officers who held any offices in local courts existing at the time of the passing of the said act; and in these latter cases specifying whether the judges are barristers or attorneys, and the names of the offices so previously held; together with a return of the remuneration which has been awarded or agreed to be awarded to any of such judges, clerks, or other officers.

## FEES OF COURTS.

COURTS OF LAW AND EQUITY COMMITTEE.—Mr. Cardwell has been discharged from further attendance on the committee, and Mr. Henley added to the committee.

## FEES OF ECCLESIASTICAL AND ADMIRALTY COURTS.

The House of Commons has ordered, That it be an instruction to the select committee on Fees in Courts of Law and Equity, to include within their inquiry, and extend the terms of the order of reference to the Ecclesiastical Courts and the Court of Admiralty.

**ANALYTICAL DIGEST OF CASES,  
REPORTED IN ALL THE COURTS.**

**Courts of Equity.  
PRINCIPLES OF EQUITY.**

[INCLUDING 2 Phill. part 1 ; 8 Beav. parts 2 & 3 ; 2 Coll. part 3 ; 5 Hare, part 1 ; 14 Sim. part 3 ; 32, 33 Legal Observer.]

**ACCOUNT.**

1. *Direction not to disturb settled account.*—*Executor de son tort.*—A party sued as executor *de son tort* jointly with the rightful executor, stated by his answer that he had, before the bill was filed, accounted for his receipts and payments to his co-defendant, and paid over to him the balance: *Held*, that such settlement would not be binding on the plaintiff who was beneficially interested in the estate, and therefore the court refused to insert in the decree the usual direction as to not disturbing settled or stated accounts.

Such a direction is applicable only to an alleged settlement of accounts between plaintiff and defendant, and not to one between co-defendants.

An executor *de son tort* is subject to all the liabilities, but entitled to none of the privileges, of an ordinary executor. *Carmichael v. Carmichael*, 2 Phill. 101.

2. *Counter-claim subject of special inquiry.*—Where the answer to a bill for an account sets up a counter-claim, as to which it is doubtful whether it would or would not be available to the defendant as an item of discharge under the general account directed by the decree, the court, as the safer course, will make it the subject of a special inquiry. *Lord v. Wightwick*, 2 Phill. 110.

Case cited in the judgment: *Murray v. Barlee*, 3 Myl. & Cr. 209.

And see *Receiver*.

**ADMINISTRATION SUIT.**

*Voluntary bond and debts not carrying interest.*—In the administration of assets, a voluntary bond is to be preferred to interest upon debts not by law carrying interest, payable under the 46th Order of August, 1841. *Garrard v. Lord Dinorben*, 5 Hare, 213.

See *Creditor's Suit*.

**ADMISSIONS.**

*In aid of an action.*—This court will not on motion direct certain facts to be admitted by a defendant for the purpose of facilitating the trial at law of a question between him and the plaintiff when the court below has refused to order such admissions. *Rodgers v. Nowill*, 33 L. O. 525.

**APPEAL.**

See *Jurisdiction*.

**APPOINTMENT.**

See *Husband and Wife*.

**APPORTIONMENT.**

*Dividend on bond debt.*—*Tenant for life of the residue and those in remainder.*—Part of a testator's residuary estate consisted of a bond debt, which, owing to the insolvency of the debtor's estate, was not recovered until many years after the testator's death, when the gross sum recovered in respect of principal and interest did not equal the amount of the original debt. *Held*, that, as between the tenant for life of the residue and those in remainder, the former was not entitled to receive what had actually been recovered in respect of interest, but only the amount of interest at 4 per cent. on the sum which the bond would have realised if the debtor's estate had been administered at the end of a year after the testator's death. *Turner v. Newport*, 2 Phill. 14.

**ASSETS.**

See *Laches*.

**ATTACHMENT.**

*Bankruptcy.*—*Notice of motion.*—Where a defendant becomes bankrupt before putting in his answer, and the plaintiff files a supplemental bill against his assignees, it is improper to sue out process of attachment for contempt in not putting in an answer.

A motion to discharge the attachment should be made in both the original and supplemental suits, although the plaintiff had become bankrupt, and the solicitor was his solicitor, as well as solicitor to the assignees.

The court, upon amendment of the notice of motion by entitling it in both suits, however, merely stayed the proceedings. *Robertson v. Southgate*, 33 L. O. 257.

**CREDITOR.**

1. *Executor.*—*Restraining action.*—The court will not restrain a creditor from prosecuting his legal remedy against the personal representatives of his debtor, unless there is a decree under which the creditor has a present right to go in and prove his debt. *Rankin v. Harwood*, 2 Phill. 22.

2. *Personal representative.*—*Official assignee.*—An order to pay a sum to a person or his personal representative will justify a payment to his official assignee. *Hodson v. Harris*, 33 L. O. 139.

3. *Execution.*—*Administration suit.*—*Injunction.*—*Contingent decree.*—A creditor recovered judgment, and sued out a writ of *fi. fa.* thereupon, in the lifetime of his debtor, and placed the writ in the hands of the sheriff on the day after the debtor died. A decree was afterwards made in the suit of an equitable mortgagee of certain parts of the real and personal estate of the debtor against his devisee and executor, for the sale of the mortgaged property, and if the proceeds of such sale should be insufficient to satisfy the plaintiff's debt, then for an account and application of the general personal and real estate of the testator, in a due course of administration. After this decree the judgment creditor levied, under the *fi. fa.*, on goods left by the debtor. The executor thereupon proved

for an injunction to restrain execution, which the court refused on two grounds,—1st, because the decree for an account and administration of the general estate was not absolute, but was conditional on the mortgaged property proving insufficient to satisfy the plaintiff's demand; and 2ndly, because the judgment creditor acquired a right to the goods of the debtor, by virtue of the writ of *fi. fa.*, from the *teste* of the writ, and therefore paramount to the right of the executor. *Runken v. Harwood*, 5 Hare, 215; *Ranken v. Boulton*, 5 Hare, 215.

Cases cited in the judgment: *Lee v. Park*, 1 Keen, 714; *Clarke v. Lord Ormonde*, Jac. 108; *Vernon v. Thellusson*, Phill. 466.

#### CREDITOR'S SUIT.

1. *Voluntary assignment of lost deed.*—*Qualifying witness to prove its contents.*—On the hearing of a creditor's suit in which the plaintiff claimed as assignee of a deed of covenant alleged to have been executed by the testator, it appearing from the evidence of one of his own witnesses, that the benefit of the deed, which was not forthcoming, had been assigned to him without consideration, for the express purpose of qualifying the covenantee to be a witness to prove its contents, and the plaintiff having failed in the due preliminary proof of the execution of the instrument, and of its loss, the Lord Chancellor reversed the decree of the court below, by which certain inquiries were directed as to these points, and retained the bill with liberty to the plaintiff to bring an action.

*Semble.* If the execution and loss of the deed had been duly proved, the covenantee would have been a competent witness to prove its contents, as he swore positively on his cross-examination that the assignment was absolute, and that he had no personal interest in the suit, and the suit being for payment out of assets in a course of administration, and therefore not brought here solely for the purpose of changing the jurisdiction. *Watson v. Parker*, 2 Phill. 5.

2. *Administration of assets.*—*Judgment.*—*Priority.*—In a creditor's suit the plaintiff did not satisfactorily prove his debt, and the bill was retained with liberty to establish the debt at law.

*Semble*, that a judgment obtained by him, under these circumstances, would not give him a priority over the other simple contract creditors. *Gibert v. Hales*, 8 Beav. 236.

3. *Priority.*—*Mortgage.*—*Laches.*—A bond-creditor proved his debt under a decree in a creditor's suit; he also claimed to have an equitable mortgage for the amount. The matter stood over to amend his charge, &c. He neglected to do so, and was reported a bond-creditor only. The estate was sold and the money paid into court, and an apportionment directed. Nine years after, his personal representative presented a petition for liberty to go in and establish his mortgage, alleging that he had recently discovered that the charge had

not been amended: it was dismissed with costs. *Cattell v. Simons*, 8 Beav. 243.

And see *Administration Suit*.

#### DEVISEES.

Devisees not bound by the action brought, or the inquiry as to damages had against the executors, were entitled to have the question of the liability of the estate of the testator on the covenant tried in an action defended by the devisees themselves. *Morse v. Tucker*, 5 Hare, 79.

#### EVIDENCE.

Where the issue raised by the bill and answer was, whether the plaintiff had or had not signed a document under the representation and belief that it was an authority to another to receive the plaintiff's rents, when it was in fact a contract for the sale of his estate, evidence of the value of the estate cannot be regarded as showing that, if a purchase, it was a purchase from a distressed man at an undervalue, but can only be regarded as bearing on the probability or improbability of the alleged sale. *Preston v. Wilson*, 5 Hare, 194.

#### EXECUTOR DE SON TORT.

See *Account*, 1.

#### EXECUTOR.

*Assent to legacy.*—It is not sufficient to prove an assent to a legacy by the executors to induce the court to order payment of it to a legatee, but the executors must either appear upon the petition, or service of it upon them must be proved. *Parker v. Watts*, 33 L. O. 283.

See *Creditor; Receiver*.

#### FOREIGN LAW.

As to the mode in which a foreign law ought to be proved in an English court of justice, and observations on the difficulties in adjudicating thereon.

It is a rule of English law, that no knowledge of foreign law is to be imputed to an English judge sitting in a court of mere English jurisdiction.

As cases arise, in which the rights of parties litigating in English courts cannot be determined, without ascertaining, to some extent, what is the foreign law applicable in such cases; foreign law and its application, like any other results of knowledge and experience in matters of which no knowledge is imputed to a judge, must be proved as facts are proved, by appropriate evidence, *i. e.*, by properly qualified witnesses, or by witnesses who can state, from their own knowledge and experience, gained by study and practice, not only what are the words in which the law is expressed, but also what is the proper interpretation of those words, and the legal meaning and effect of them as applied to the case in question.

There may be cases in which a judge may take upon himself to construe the words of a foreign law, and determine their application to the case in question, especially if there should be a variance or want of clearness in the testimony.



**Semble.** Witnesses, in giving their testimony on foreign law, may, if they think fit, refer to laws or to treatises, for the purpose of aiding their memory upon the subject of their examination; but, in general, it is the testimony of the witness, and not the authority of the law or of the text writer, detached from the testimony of the witness, which is to influence the judge.

A party is not bound to produce a written law or decree which his witness, in proving a foreign law, refers to.

Witnesses, in proving a foreign law, referred to certain passages in law books. *Held*, that this did not give the opposite party a right, without further proof, of reading any other passages from the same works.

On a question of foreign law, a joint written opinion given by two jurists, was exhibited to them on their examination, which they verified as being according to the law of the foreign country. *Held*, that this evidence was receivable. *Earl Nelson v. Lord Bridport*, 8 Beav. 527.

Cases cited in the judgment: *Lindo v. Belisario*, 1 Hagg. C. C. 216; *Dalrymple v. Dalrymple*, 2 Hagg. C. C. 54, 58, 81; *Collier v. Simpson*, 5 Carr. & P. 75.

#### GUARDIAN AND WARD.

**Injunction to stay proceedings at law.**—Securities obtained by a guardian from his ward will be relieved against, although they may have passed into the hands of third parties, provided the holders of them can be affected with notice of the relationship existing between the parties at the time the securities were obtained. *Maitland v. Irving*, 33 L. O. 256.

#### HUSBAND AND WIFE.

1. **Articles of separation.**—*Specific performance.*—Articles of separation decreed to be specifically performed.

A covenant to indemnify the husband against his wife's debts is not the only consideration that will support such articles; a covenant to put an end to a suit against the husband in the ecclesiastical court, or pay him an annuity, or to pay his existing debts, is sufficient. *Wilson v. Wilson*, 14 Sim. 405.

Cases cited in the judgment: *Seeling v. Crawley*, 2 Vern. 386; *Augier v. Augier*, Prec. Ch. 496; *Fitzer v. Fitzer*, 2 Atk. 511; *Fletcher v. Fletcher*, 3 Bro. C. C. 619 (cited); *Guth v. Guth*, ibid. 614; *Legard v. Johnson*, 3 Ves. 352; *Bateman v. Countess of Ross*, 1 Dow, 235; *St. John v. St. John*, 11 Ves. 526; *Worral v. Jacob*, 3 Mer. 256; *Ros v. Willoughby*, 10 Price, 2; *Elworthy v. Bird*, 2 Sim. & Stu. 372; *Logan v. Birkett*, 1 Myl. & Keen, 220; *Frampton v. Frampton*, 4 Beav. 287; *Jones v. Waite*, 9 C. & F. 101; *More v. Freeman*, Bunb. 205; *Hyde v. Price*, 3 Ves. 437; *Cooke v. Wiggins*, 10 Ves. 191; *Clough v. Lambert*, 10 Sim. 174; *Wellesley v. Wellesley*, ib. 256; 4 Myl. & Cr. 554.

2. **Appointment by wife.**—*Husband's right as administrator.*—A married woman, having a power to appoint a fund to her children, appointed it to an only child of tender years, who

died four months afterwards. Her husband attested the deed of appointment as a witness. Twenty-four years afterwards the wife died, in the lifetime of her husband, who then claimed the fund as administrator of the child. The court directed issues to try whether the power had been executed without fraud on the part of the husband and wife. *Gee v. Gurney*, 2 Coll. 486.

#### INCUMBENT.

See *Waste*, 3.

#### INDEMNITY.

**Interest.**—A party was directed to pay certain costs, and make other payments, but was declared to be entitled to be indemnified out of funds in court. *Held*, that he was entitled to interest at 4 per cent. on all sums paid for costs or otherwise. *Wainman v. Bowker*, 8 Beav. 363.

#### INFANT.

1. **Ward.**—*Marriage settlement.*—The court will not, even with the consent of a married ward, order payment of a fund belonging to her to the husband, but will order the usual reference to the Master to approve a settlement, leaving the husband to make such proposals before the Master as he may think fit. *Russell v. Nicholls*, 33 L. O. 113.

2. **Bailiff.**—*Injunction though not prayed.*—An infant is entitled to treat a person who enters on his estate during his infancy as his bailiff, who is accountable as such.

The jurisdiction which this court has to decree accounts of the estates of infants against persons entering thereon during their minority, is not taken away by the fact that at the time when the bill was filed the infant had attained 21.

Excepted case, in which an injunction was granted, though not prayed for by the bill. *Blomfield v. Eyre*, 8 Beav. 250.

3. **Next friend.**—Difficulties in dealing with suits filed by strangers on behalf of infants. On the one hand you may encourage useless and expensive litigation, on the other, you may discourage interference very often necessary for their protection. *Cross v. Cross*, 8 Beav. 455.

4. **Guardians in Ireland.**—Guardians were appointed in Ireland to infants brought up, educated, and domiciled there. Their fortunes were in court in England. The court adopted the proceedings in Ireland, appointed the same persons guardians, notwithstanding they resided out of the jurisdiction, and ordered payment to them of the maintenance money. *Daniel v. Newton*, 8 Beav. 485.

#### INJUNCTION.

1. **Covenant.**—An application for an injunction to restrain an alleged breach of covenant had been once ordered to stand over until the decision of two legal questions raised by the defendant. On those questions being decided in the plaintiff's favour, and the motion coming on again, the defendant raised a third legal objection, and the court below, at his request,



directed a case to be stated for the opinion of a court of law upon it, but, on the ground of the delay in bringing it forward, granted an injunction in the meantime. On appeal, however, the Lord Chancellor dissolved the injunction, notwithstanding that circumstance, on the ground of the much greater facility of indemnifying the plaintiff than the defendant, according as the one or the other might succeed at law.

Where the interference of the court by injunction depends upon a legal right which is disputed, the court ought, for its own security, to put the matter into a course for ascertaining that right; and if that is to be done by sending a case for the opinion of a court of law, this court ought not to leave it to the option of the defendant, but ought itself to direct a case to be prepared, with a reference to the Master to settle it, in case the parties differ. *Rigby v. Great Western Railway Company*, 2 Phill. 44.

2. Principles which ought to regulate the exercise of the jurisdiction by injunction. *Spottiswoode v. Clarke*, 2 Phill. 154.

And see *Waste*, 1, 3.

#### JURISDICTION.

*Appeal*.—An appeal was made to the Lord Chancellor against an order of the Master of the Rolls. What was done did not appear, further than that the Lord Chancellor either decided it on the merits, or refused to hear it on the ground that the defendant was in contempt for non-payment of costs. A motion was afterwards made to the Master of the Rolls to discharge the order, but he held he had no jurisdiction to interfere. *Oldfield v. Cobbett*, 8 Beav. 292.

#### LACHES.

*Admission of assets*.—*Decree*.—*Taxation*.—Observations as to the mode and forms of drawing up and passing decrees in the registrar's office.

By consent, the registrar, in drawing up a decree, sometimes permits such alterations to be made in it as he believes the court would sanction, and which are binding on the parties.

Strict regularity requires that every word of a decree should be pronounced or dictated by the court, and that, without a subsequent order of the court, or at least without personal communication with the judge, no alteration should be made. This became at first inconvenient, and at length impracticable, and now the registrars, upon consent, allow alterations, as the admission of assets and striking out the direction to take accounts, which would have been necessary if assets had not been admitted. The admission is usually stated to have been made by the party's counsel.

As to the mode of proceeding to be relieved from an admission in a decree fraudulently inserted, or consented to by mistake.

If a party has been induced by fraud to consent, or has by mistake consented to a decree, the court has the power to relieve him, and will do so, upon being satisfied that fraud or mistake existed, that the conduct of the party himself had not deprived him of the title to

relief, and that the relief can be given with due regard to the just interests of others.

It is doubtful whether the form of proceedings in such cases is strictly settled, or whether the same form is exclusively applicable to all cases. If the application for relief is made immediately and before any proceeding of any kind has been had, and if the evidence be clear, a rehearing which places everybody in the same position as when the consent was given or supposed to be given would probably be sufficient. If the application be after the lapse of years, after a devolution of title, and after various proceedings have been had, the parties may have done or omitted to do so many acts materially affecting their rights, as to make it in the highest degree unjust to place them in the same position as they were in at the time when the consent was given or supposed to be given. In such a case, a rehearing could scarcely be thought of itself sufficient. Again, there may be differences in this respect between cases of fraud and cases of mistake. In cases of fraud the party aggrieved may file an original bill for relief, and it may well be thought that he ought always to do so.

A decree made in 1830, contained an admission of assets: a petition of rehearing and a special petition to be relieved from the admission were presented, which the court conceived to be grounded on a fraud committed. *Held*, in 1845, that whether fraud or mistake had been committed, yet, considering the circumstances of the case, the length of time that had elapsed, the transactions that had taken place, the absence of documents, and the imperfections of the evidence, justice could not be done upon a mere rehearing of the cause as it stood in 1830.

Observations as to the allowance to solicitors in taxation of costs for business not necessary or required for the interests of their clients, by way of compensation for services for which they are inadequately remunerated. Distinction between this and fictitious charges for important business as done, which, in fact, has been neglected. *Davenport v. Stafford*, 8 Beav. 503.

And see *Waste*, 2.

#### LEGACY.

*Per capita*.—Gift of a legacy to A. for life, with remainder to B. for life, and after the death of the survivor, upon trust to pay it "to, between, or amongst C., if then living, but if then dead, to, between, and amongst C.'s children and the children of B. then living, equally," &c. *Held*, that C. and the children of B. took *per capita*. *Rickabe v. Garwood*, 8 Beav. 579.

See *Executor*.

#### LUNATIC.

1. *Part maintenance of wife out of her separate income*.—The court will not order a sale of stock bequeathed to the separate use of a married woman, who afterwards became insane, for the purpose of reimbursing her husband the medical and extra expenses occasioned by her insanity, and which had been discharged by the

husband out of his own income. *Re Alvey*. 32 L. O. 395.

2. *Carriage of commission.*—Appointment of committee.—Where there is a contest between several parties for the carriage of a commission of lunacy, the court considers only which of them is most likely to bring out the truth, and no regard is paid to proximity of relationship and other considerations of that kind, though these are of importance when the question is as to the appointment of a committee.

In a contest for the committee of lunatic, the party who has the carriage of the commission is not on that ground entitled to any preference.

Where the issuing of a commission of lunacy is opposed, or the carriage of it contested, the court will not prospectively give leave to any party to propose himself as committee in the event of the subject of the commission being found of unsound mind, but in issuing the commission will direct that no proceedings be taken for the appointment of a committee until further order. *Webb, in re*, 2 Phill. 10.

3. *Power to deal with separate estate of married woman for benefit of husband and children.*—A wife being of unsound mind and in confinement, and her husband being poor and unable to maintain her, the court ordered that the surplus income of her separate property, after providing for her maintenance, should be paid to the husband, but refused to apply any part of the principal fund to reimburse the husband what he had actually paid for her past maintenance.

*Quare*, whether, if the expenses of her past maintenance had been still unpaid, that circumstance would have made any difference. *Edwards v. Abrey*, 2 Phill. 37.

4. *Appointment of committee.*—A bastard tenant for life of real estates being found lunatic, leave was given to his natural daughter, who had resided with him up to the time of his confinement, to carry in proposals for a committee of the estate as well as of the person, as a check upon the remainder-man. *Webb, in re*, 2 Phill. 116.

5. *Advancement out of lunatic's estate for his son.*—Application for a reference as to the propriety of advancing a large sum of money out of the capital of a lunatic's estate to enable his son to purchase an estate refused. *Thomas, in re*, 2 Phill. 169.

#### MARRIED WOMAN.

1. *Domicile.*—Compromise.—Compromise of suit by married women domiciled in France sanctioned without reference to the Master, on proof that they had concurred in notarial acts, which, by the law of France, were binding on them, and that the subject-matter was mere personalty. *Chameau v. Riley*, 8 Beav. 269.

2. *Execution of deed not compellable.*—The court will not make a peremptory order upon a married woman to execute a conveyance of an estate not settled to her separate use. *Jordan v. Jones*, 2 Phill. 170.

Case cited in the judgment: *Foxon v. Foxon*, Rolls Court, 1836.

See *Lunatic*, 1, 2.

#### MORTGAGOR AND MORTGAGEE.

See *Waste*, 1.

#### PARTNERSHIP.

*Production of documents.*—A partner who has mixed accounts of the partnership transactions with accounts of his own private affairs is bound, in a suit instituted for an account of the partnership transactions, to produce the book containing such accounts. *Pesterre v. Willis*, 33 L. O. 567.

#### PUBLIC POLICY.

An agreement to put an end to a suit for nullity of marriage on the ground of impotency is not contrary to public policy. *Wilson v. Wilson*, 14 Sim. 405.

#### RECEIVER.

*Executor.*—*Account.*—*Interest.*—*Principal and surety.*—The estate of a deceased receiver was liable to make good certain payments, and his executors neglecting to pay pursuant to order, the surety was directed to pay the amount with interest at four per cent. *Clements v. Beresford*, 32 L. O. 448.

#### SPECIALTY DEBTS.

*Contribution between specific legatees and devisees.*—A testator having made a particular devise of all his real estates, and having bequeathed several specific legacies, dies indebted by specialty and simple contract. His personal estate not specifically bequeathed is more than sufficient to pay his simple contract debts, but not sufficient to pay his specialty debts: *Held*, that the amount necessary to complete the payment of the specialty debts must be contributed rateably by the specific legatees and devisees. *Tombs v. Roch*, 2 Coll. 490.

Cases cited in the judgment: *Galton v. Hancock*, 2 Atk. 424; *Forrester v. Lord Leigh*, Amb. 171; *Aldrich v. Cooper*, 8 Ves. 382; *Pearce v. Loman*, 3 Ves. 135; *Makeham v. Hooper*, 4 Bro. C. C. 153; *Clifton v. Burt*, 1 P. W. 678, 679; *O'Neal v. Mead*, 1 P. W. 693; *Huslewood v. Pope*, 3 P. W. 322; *Mirehouse v. Scaife*, 2 Myl. & Cr. 695, 699; *Hamby v. Fisher*, Amb. 127; 1 Dick. 104; *Tipping v. Tipping*, 1 P. W. 729; *Duke of Devonshire v. Atkins*, 2 P. W. 381; *Silk v. Pryme*, 1 Dick. 384; 1 Bro. C. C. 138, cited; *Long v. Short*, 1 P. W. 403.

And see *Trust*, 8.

#### SPECIFIC PERFORMANCE.

See *Husband and Wife*, 1.

#### TAXATION OF COSTS.

See *Laches*.

#### TRUST.

1. *Production of documents.*—*Affidavits.*—The affidavit of the solicitor of a defendant will not be admitted upon a motion for the production of documents.

Communications passing between a trustee and other parties, relatively to the trust matters, cannot be kept back from any of the *cestuis que trust*, upon the ground of professional con-

fidence subsisting between the trustee and the parties with whom he communicated. *Tugwell v. Hooper*, 33 L. O. 328.

2. *Recommendation in a will to an office.—Words of advice not a trust.—Injunction.*—The expression of a testator's wish and desire that the trustees of his will should, whenever they might have occasion for a receiver, agent, or manager of his estates, appoint a certain person, does not confer upon the latter an irrevocable right to be so appointed.

An injunction will not be granted to restrain the anticipated commission of an act where the plaintiff's equity (if any) would not arise until such act should have been done. *Finden v. Stephens*, 33 L. O. 186.

3. *Payment of money into court.*—A trustee charged with misapplication of trust-moneys admitted by his answer that he had misapplied three sums, and set forth a debtor and creditor account in which he credited himself with, amongst others, those three sums, and also with a fourth sum which was equally inadmissible, but which turned the balance of the account in his favour. On a motion for payment of the three sums into court, *Held*, that the plaintiff, not having in his motion challenged the fourth sum, the motion could only be granted to the extent to which the answer admitted a balance after striking those three items out of the discharge. *Nokes v. Seppings*, 2 Phill. 19.

4. *Staying proceedings on the application of a defendant.*—After a suit for the execution of the trusts of a deed, by which real estates had been vested in trustees for sale and payment of incumbrances, which were very numerous, was nearly ripe for hearing, the court, at the instance of the owner of the estates, ordered all the proceedings to be stayed on payment to the plaintiff of all his pecuniary claims in the suit, and costs, (all other parties to the deed consenting,) although the plaintiff insisted that the execution of the trust in this suit would incidentally affect other objects in which he was interested in reference to the estates comprised in it. *Damer v. Earl of Portarlington*, 2 Phill. 30.

5. *Forfeiture.*—A court of equity will declare and give effect to a forfeiture, where such forfeiture is incidental to the administration of a trust. *Duncombe v. Levy*, 5 Hare, 232.

6. *Property lost.—Indemnity of new trustees.*—In a suit to appoint new trustees of a settlement, where a part of the trust property had been lost by previous negligence or breach of trust, the court refused to confine the trust to the remaining property, but appointed the new trustees of the whole of the property comprised in the settlement, directing (for the protection of the new trustees) a reference to inquire whether it would be proper to take proceedings for the recovery of the property which had been lost. *Bennett v. Burgis*, 5 Hare, 295.

7. *Bank of England.—Forgery.*—One of the two trustees of a sum of stock sold it out under a power of attorney to which he had forged the signature of his co-trustee, and some time afterwards absconded. *Held*, that the Bank of

England was compellable in a court of equity to re-invest the stock in the name of the other trustee. *Sloman v. Bank of England*, 14 Sim. 475.

8. *Debt by specialty.*—The money due in respect of a breach of trust where the trust is created by instrument under seal is a specialty debt. *Wood v. Hardisty*, 2 Coll. 542.

Case cited in the judgment: *Bartlett v. Hodgson*, 1 T. R. 42.

#### WARD.

See *Guardian and Ward*; *Infant*, 1, 4.

#### WASTE.

1. *Mortgagor and mortgagee.—Injunction, though not prayed.*—After a decree in a foreclosure suit, a mortgagor in possession began to commit waste; he was restrained by injunction, though no injunction was prayed by the bill. *Goodman v. Kine*, 8 Beav. 379.

2. *Tenant for life and remainder-man.—Length of time.—Laches.*—Tenant for life committed equitable waste in 1809, during the infancy of his eldest son, the first tenant in tail in remainder. The son came of age in 1819. In 1828, he was cognizant of the act of waste committed by his father, but did not institute any suit on account of them until 1840, which was two years after his father's death.

*Held*, that the suit was not barred by length of time. *Duke of Leeds v. Lord Amherst*, 14 Sim. 357.

And see *Laches*.

3. *Incumbent.—Patron.—Injunction.*—It cannot be decided as a general proposition, without any exception, that the conversion of ancient meadow into arable is to be treated as waste.

In respect to waste, a parson or vicar is not to be considered as merely lessee for years, or as tenant for life, under a will or settlement.

The court will not restrain an incumbent from ploughing up a meadow infested with moss and weeds, for the purpose of laying it down again in grass when properly cleaned.

Whether a patron is in any case entitled to an injunction to restrain the incumbent from ploughing up ancient meadows, *quare*. *Duke of St. Alban's v. Skipworth*, 8 Beav. 354.

Case cited in the judgment: *Simmons v. Norton*, 7 Bing. 648.

And see *Injunction*.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Lord Chancellor.

*Flight v. Marriott*. April 30, 1847.

#### RETURN OF DEPOSIT ON APPEAL.

*The appellant is entitled to the return of the sum deposited on presenting a petition of rehearing, if the decree appealed against is reversed; and he is not deprived of this*

*right by the fact that a case has been directed to try a question raised in the suit.*

Mr. *Stuart* applied for the return of the sum deposited by the appellant on presenting the petition of appeal. The decree of *Vice-Chancellor Knight Bruce* in this case had been reversed, and a case directed to be sent to law to try the question of usury raised in the suit. The respondent made several objections, but the learned counsel submitted, that the appellant having been successful was entitled by the practice of the court to have the deposit returned.

The Lord Chancellor, after consulting with the registrar (Mr. *Colville*, sen.) said, he thought the deposit ought to be returned—such return would not in anywise effect the issue of the action.

### Rolls Court.

*Baker v. Sowter.* Feb. 8th, and May 6th, 1847.

PURCHASER.—TITLE.—DECREE.—MOTION.

*The court will not, upon motion, discharge a purchaser from his purchase, upon the ground of objections which affect the propriety of the decree for sale; though where the purchase money was very small, it allowed the objections to the decree to be raised upon petition.*

*A purchaser is not entitled to be relieved from his purchase, upon the ground of the decree under which the sale is made being irregular.*

THIS was an application to discharge an order for the payment of purchase money into court, and for a reference to the Master to tax the costs of the purchaser. The order had been originally obtained on the application of the purchaser, who now sought to have it discharged, but it had been obtained upon the supposition that a good title could be made to the property purchased without a reference as to the title. The purchaser now stated, that he had discovered the title to be clearly bad, as the estate was in settlement, and there was no person entitled to sell, so that the order for sale ought not to have been made.

Mr. *Tinney* and Mr. *Hardy*, for the motion, relied on the circumstances as above stated, and also contended, that the order having been originally obtained under an agreement as to the time when the sale should be completed, which had subsequently been abandoned, must be considered as a nullity.

Mr. *Kindersley* and Mr. *Sheffield*, contra.

Lord *Langdale* said, he could not, on such an application as the present one, consider objections to the decree, which this objection amounted to. The only question which he could entertain was, whether the order sought to be discharged could stand in its present form. If it had been drawn up by agreement, and that agreement had been departed from, the purchaser might be relieved. But in that case the proper course would be, to make the order

which might be made adversely, namely, the usual order for a reference to the Master to report upon the title, when the objections now urged would be taken. His lordship afterwards, however, upon the representation that the purchase-money was only 260l., and that there was no other question between the parties but this one of the power to sell under the settlement, allowed the point to be raised on upon petition to come on with the motion, and the motion to stand over for that purpose.

A petition was presented accordingly, but,

Lord *Langdale* refused the application, stating, that for the reasons assigned in *Lloyd v. Johnes*, 9 Ves. 37; *Bennett v. Hamill*, 2 Sch. & Lef. 566, and *Curtis v. Price*, 12 Ves. 89, he did not think that a purchaser was entitled to be relieved from his purchase, upon the ground of the decree under which the sale was made being irregular, although had such an objection been open to a purchaser, he would have been entitled to be relieved in the present case.

*Re Pointz.* March 11, 1847.

ORDER FOR DELIVERY OF PAPERS.—SOLICITOR.

*The court will not make an order for the delivery of papers against a solicitor in his absence, because he has not complied with an order to deliver his bill, without a previous order for the serjeant-at-arms to compel appearance.*

THIS was a motion to compel the delivery of certain title deeds by a solicitor, without prejudice to any lien he might have upon them. The solicitor had not delivered his bill though an order for the delivery of it had been obtained—and did not appear.

Mr. *Cooper* for the motion, cited *Cooper v. Hewson*, 2 Y. & C. 515.

Lord *Langdale* observed, that in that case the solicitor appeared. Here the court was asked to make an order upon a solicitor in his absence—an order for the delivery of deeds and papers, because he had not delivered his bill. The proper course would be to obtain an order for the serjeant-at-arms to compel an appearance. Order made accordingly, subject to the production of an affidavit of the bill not being delivered.

### Queen's Bench.

(Before the Four Judges.)

*The Queen v. Turk.* Easter Term, 1847.

PRACTICE.—CERTIORARI.—RETURN.

*In September A. B. was convicted before magistrates of harbouring seamen, under the 7 & 8 Vict. c. 112; in November a writ of certiorari issued to remove the record of the conviction into this court; in December a return was made; and in January the points for argument were given. The conviction omitted to set out the evidence taken before the magistrates. The court discharged a rule obtained either to quash*

*the return, or to take it off the files of the court, in order that the conviction might be amended by setting out the evidence.*

*The certiorari required the magistrates to return the record of a conviction, in which A. B. was convicted of certain trespasses and contempts.*

*Held, that although only one offence was committed, the conviction was properly described, and that after the magistrates had returned the right conviction it was too late to take such an objection.*

A writ of certiorari having issued, on the fiat of the Attorney-General, to bring up a conviction, under the statute 7 & 8 Vict. c. 112, the Merchant Seamen's Act, a rule nisi was afterwards obtained to show cause why the writ should not be quashed, or why the return should not be taken off the files of the court in order that the conviction might be amended by the magistrates. The conviction was for harbouring seamen, and the defect in the conviction was, that all the evidence was not set out. The conviction took place on the 22nd Sept., on the 12th November the certiorari issued, on the 5th December the return was made, and on the 16th January the points for argument were given. The object of the application was, to enable the magistrates to supply the defect in the conviction in order that the opinion of the court might be taken on the construction of the 50th and 51st sections of the act.

The court called upon Mr. Greaves in support of the rule. The evidence intended to be inserted in the conviction had been received by the magistrates, but from some omission had not appeared in the conviction. I can find no case where such an amendment has been allowed, but the court has a discretion in the matter, if they think fit to exercise it. A conviction may be drawn up at any time till impeached directly or indirectly, either by being litigated in a court of appeal, or on a writ of habeas corpus. *Rex v. Dukes,*<sup>a</sup> *Rex v. Barker,*<sup>b</sup> *Rex v. Marsh,*<sup>c</sup> *Rex v. Wakefield,*<sup>d</sup> *Rex v. Neville,*<sup>e</sup> *Mellish v. Richardson.*<sup>f</sup>

He also contended, on the authority of the case of *Rex v. Hedingham Sible,*<sup>g</sup> that the certiorari which was to bring up the record of a conviction of certain trespasses and contempts, did not include trespass and contempt in the singular number.

The Attorney-General, (Sir J. Jervis,) contra, was only called upon to answer the last objection. This certiorari is framed according to the uniform and constant course of practice. There is only one offence committed, and it is not contended that the magistrates have not returned the right conviction. In the case cited the order was for the removal of a man, his wife, and their children, and the certiorari described it as an order for the removal of the

man and his children. Here the record is properly described, unless the court holds that the plural does not include the singular.

Lord Denman, C. J. It appears to me this application is made too late. There is no doubt the court will interfere in certain cases for the purpose of preventing mischief being done, but it is difficult to see what should have interfered to prevent an application being made to amend the conviction between the months of September and January. If the court should see that any fraud had been practised, or that any person had been improperly convicted, it might, in the exercise of its discretion, grant such an indulgence, but there is no sufficient ground for the interference of the court in the present instance.

On the other point I think there is no objection to the form of this certiorari, it is perfectly consistent with the constant course of practice. The certiorari requires the magistrates to return the record of a certain conviction, and if there had been any doubt or ambiguity, they might have returned that they had no such conviction, but they do not do so, they return a conviction which the Attorney-General says is the one he wanted.

Patteson and Wightman, J.'s, concurred.

Rule discharged.

### Queen's Bench Practice Court.

*Hilton v. Lord Granville.* Easter Term, 1847.

#### PREROGATIVE OF THE CROWN.—VENUE.

*The prerogative of the crown to change the venue in an action can only be exercised by the crown officers in actions coming within the class of personal in the sense of transitory.*

*Quære, Whether in a rule to show cause the Attorney-General has, officially, in this court, a right to the final reply.*

ACTION for negligently working certain mines underneath the town of Newcastle-under-Lyne. The defendant, who was a tenant of the crown, applied for and obtained an *aide le roi*. The Attorney-General, at the latter part of Easter Term, applied *ex officio* for an order for a trial at bar, and for the summoning of a jury from the county of Middlesex.

Mr. Godson now moved for a rule to set aside this order so far as related to the summoning the jury from the county of Middlesex. The right of the crown to an order of that sort is confined to cases of a purely personal nature, and does not extend to cases affecting an interest in land. *The Attorney-General v. Churchill*, (as where a case of the *Attorney-General v. Parsons*,<sup>b</sup>) founded on a statement made in Manning's Exchequer Practice,<sup>c</sup> was overruled.

The Attorney-General and Mr. Ellis showed cause in the first instance. This case is not touched by that of *The Attorney-General v.*

<sup>a</sup> 8 Term R. 625.

<sup>b</sup> 1 East, 186.

<sup>c</sup> 2 Barn. & Cress. 717.

<sup>d</sup> 1 Burr. 488.

<sup>e</sup> 2 Barn & Adol. 299. <sup>f</sup> 7 Bar. & Cress. 819.

<sup>g</sup> 1 Burr. S. C. 102.

<sup>a</sup> 18 Mee. & Wels. 171. <sup>b</sup> 2 Mee. & W. 23.

<sup>c</sup> Bk. 3, c. 21, s. 1, p. 96.

**Churchill.** That case merely corrected an error previously existing in the profession, and declared that the crown had no right of this kind in an information of intrusion. There the court thought such an information to be a proceeding of a real, and not of a personal nature. But here the proceeding is altogether of a personal nature: it was an action for damages for negligently working mines. It is entirely distinct from a proceeding in which the right to the soil is in issue. The crown had a right to prevent, in a case like this, the issuing of the writ of *nisi prius*, and if so, the trial must, as of course, take place at bar. Surely if the right of the crown attached so far, it must attach to the extent of changing the county from which the jurors were to come. This is not merely the case of a prerogative of the crown court, but is a prerogative used for the benefit, and conceded to the demand, of the subject.

Mr. Godson, Mr. Stammers, and Mr. Joseph Brown, in support of the rule. The right of the crown is restricted to actions that are personal in the sense of transitory. Where the action partakes of the nature of the realty, the crown has no prerogative of the sort now contended for. The jurors may be required to have a view. Now they can only have that by the introduction into the *venire facias juratores* of a clause empowering the sheriff to take the jurors to the place to be viewed. The sheriff of Middlesex would have no right to take the jurors summoned from that county into the county of Stafford to view a place situated within the bailiwick of another sheriff.

The Attorney-General claimed the right of reply, and

Lord Denman said, that at least is a clear prerogative of the crown.

The Attorney-General. The objection as to the view has nothing to do with the case, for if that could operate to prevent the application of the rights of the crown, it would operate in cases of proceedings purely personal, which confessedly it would not.

Lord Denman, C. J. It appears to me that the case of *The Attorney-General v. Churchill* has in substance decided the present. Mr. Baron Parke, in delivering the judgment of the court there, says,—"This question must be determined, as such always are, by authority, viz., by precedent and the decisions and dicta of judges and text-writers." In speaking of the dicta of text-writers, the learned judge did not mean to say that text-writers could create the law, for it is curious enough that that very case of *The Attorney-General v. Churchill* arose out of the mistake of a most learned living text-writer, who had misapplied a case which is to be found in Savill's Reports.<sup>a</sup> But though text-writers cannot create the law, they may show what has always been treated as law. That would in fact be by producing precedents. Now here there are no precedents: there is

nothing like authority for what we are now asked to do, nor is there, in my opinion, any necessity now shown to the court to justify it in saying that this peculiar proceeding ought to be adopted. I am therefore of opinion that the present rule must be made absolute, and the previous order must be discharged.

As to the right of the Attorney-General to reply, I ought to say that Mr. Robinson (the Master of the Crown Office) informs me, that in 1841, his right in a case of this sort was denied in this court, though it was said that he was allowed that right in the Exchequer.

Mr. Justice Patteson said, that it was impossible to distinguish this case from that of *The Attorney-General v. Churchill*, which in his opinion was rightly decided. The plaintiff here was compelled by the nature of the action to lay the venue in Staffordshire, and the crown had no right to come here and as a matter of prerogative alter that venue, for the case referred to distinctly confined the power of the crown in thus changing the venue to actions of a transitory nature.

Mr. Justice Wightman and Mr. Justice Erle concurred.

Order for summoning the jurors from Middlesex discharged.

The Attorney-General then, on behalf of the crown, made a suggestion to the effect that a fair trial could not be had in Staffordshire, and on that suggestion asked for a rule to show cause why the venue should not be changed.

Rule granted.

#### Common Pleas.

*Stockbridge v. Owen.* Easter Term, 1847.

SUMMONS AT CHAMBERS.—COSTS AFTER ABANDONMENT.

*After a summons obtained before a judge at chambers has been abandoned by the party obtaining it this court will not entertain an application to compel such party to pay the costs consequent thereon. The mode of enforcing payment (if at all) is by another summons at chambers.*

Dowling, Serjeant, moved for a rule, calling upon the defendant to show cause why he should not pay the costs occasioned to the plaintiff by a summons which the defendant had taken out before a judge at Chambers, and afterwards abandoned. He was proceeding to state the circumstances, but without hearing him further,

The Court said, without expressing any opinion as to whether or not the right to costs existed, it was clear the only mode of proceeding (if at all) was by a judge's summons, in the same way as the matter had commenced, and therefore, that the present application could not be entertained.

Rule refused.

<sup>a</sup> 8 M. & W. 891.

<sup>b</sup> *Lyster and Eaton v. Edwards.*

**Exchequer.**

*Christie and another, assignees of Yeld, a bankrupt, v. Bell and another, public officers.*

**WRIT OF SUMMONS.—AMENDMENT.—LIMITATIONS.**

*The court will amend a writ of summons by inserting therein the character in which the plaintiffs sue, or the defendants are sued, if it appear that the debt would otherwise be barred by the Statute of Limitations.*

In this case a writ of summons issued, directed to "Robert Bell and Edward Stewart," requiring them (in the usual form) to enter an appearance at the suit of "James Christie and Joseph Adnit," in an action on promises. A declaration was delivered in which the plaintiffs described themselves as the assignees of Yeld, a bankrupt, and the defendants were described as two of the registered public officers of "The National and Provincial Bank of England Banking Company." *Alderson, B.*, at chambers, having set aside the declaration on the ground that it varied from the writ in the description of the parties, an application was made to amend the writ by stating therein the character in which the plaintiffs sue and the defendants are sued, and it appearing that the debt would otherwise be barred by the Statute of Limitations, *Parke, B.*, ordered the amendment.

The *Attorney-General* moved to rescind the order of *Parke, B.*, upon affidavit that the money sought to be recovered was received by the banking company in the year 1840, and had been distributed among the shareholders of the bank at that time: that the company was a fluctuating body, and now consisted of many persons who were not shareholders in 1840. It was, therefore, submitted, that the effect of the amendment would be to change the defendants and to render liable those members who have never received the money. In *Robert v. Bate*, 6 Adol. & E. 783, the court of Queen's Bench refused to amend a writ by adding the name of a defendant; though that case is at variance with the decisions in this court. *Lakin v. Watson* 2 C. & M. 685; *Brown v. Fullerton*, 13 M. & W. 556; *Culverwell v. Nugee*, 4 Dow. & L. 32.

*Pollock, C. B.* I consider the point as settled; but if it were open, I think we ought not to allow an amendment where the Statute of Limitations has begun to run.

*Alderson, B.* When the judge allowed the amendment he must have been satisfied that the service was on the defendants as public officers, and not in their private capacity. If so, what injury is done by inserting in the writ the words public officers?

*Parke and Rolfe, B.s* concurred.

Rule refused.

**BUSINESS OF THE COURTS.****Queen's Bench.**

The court will, on Monday, the 14th—Tuesday, the 15th—Wednesday, the 23rd—Saturday, the 26th—and Wednesday, the 30th days of June, inst.; and on Thursday, the 1st—

Friday, the 2nd—and Saturday, the 3rd days of July next, hold sittings, and will proceed in disposing of the business in the Crown Paper; and will also hold a sitting on Wednesday, the 7th July next, and give judgment in cases previously argued.

**PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.****House of Lords.****NEW BILLS IN PROGRESS.**

Consolidation and Amendment of the Law of Bankruptcy. For 2nd reading. The Lord Chancellor.

Debtor and Creditor. For 2nd reading. The Lord Chancellor.

Repeal of Insolvency Jurisdiction of Courts of Bankruptcy, Abolishing Court of Review, and Reducing Number of Commissioners. (No. 2.) In Select Committee. Lord Brougham.

Threatening Letters. For 2nd reading. Lord Denman.

Clergy Offences. In Committee.

**House of Commons.****NEW BILLS IN PROGRESS.**

City Small Debts Court. In Committee. Mr. Masterman.

Law of Railways. Mr. Strutt.

For the Speedy Trial and Punishment of Juvenile Offenders. In Committee. Sir John Pakington.

Lunatic Asylums Regulation. Att.-General.

Inclosure Act Amendment. Sir F. Thesiger.

Health of Towns. Lord Morpeth.

Towns Improvement Clauses.

Taxation of Costs on Private Bills. In Committee. Mr. Hume.

Registration of Voters. For 2nd reading. Mr. Walpole.

Highways. In Select Com. Sir Geo. Grey.

Administration of the Poor Laws. Sir Geo. Grey.

Copyhold Commission Continuance.

Turnpike Acts Continuance.

Loan Societies Continuance.

Ecclesiastical Courts. Mr. Bouverie.

**THE EDITOR'S LETTER BOX.**

"An Articled Clerk" states the following point in conveyancing practice:—"A. grants a lease to B., each of whom employs a solicitor in the ordinary way. A's solicitor attests the execution of the lease by his client, and B's solicitor attests the execution of the counterpart, neither lessor nor lessee personally appearing. The credit of each solicitor is taken by the other that the lease and counterpart have been duly executed by the respective parties." Our correspondent asks whether a solicitor is justified in this course, and whether he would be liable to his client in an action, should it afterwards be discovered that the signature of the opposite party was not genuine.

"Tacitum" inquires whether the widow of a person who dies seized of a rent-charge or modus, payable out of freehold lands, is entitled to dower thereof?

The letter of C. F. C., shall be attended to.



# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JUNE 12, 1847.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

### OPERATION OF THE COUNTY COURTS ACT.

THE diversity of decision and practice, which was predicted as the inevitable consequence of the establishment of the County Courts, without effective superintendence or appellate control, begins already to excite dissatisfaction. Conflicting decisions are reported to have taken place on various points of greater or less practical importance. From a multitude of communications received on the subject we shall refer to a few instances, selected upon a consideration of the extensive application of the principles involved in them.

The rules of practice settled by the judges of the superior courts, so far as they apply to cases in which the summons to appear to a plaintiff has not been personally served, would seem to admit of a great variety of construction.

The 6th rule provides, that “every such summons must be served ten clear days before the holding of the court at which it shall be returnable,” whilst rule 11 provides, that “in all cases where a summons to appear to a plaintiff shall not have been served personally, and the defendant shall not appear at the return day, it must be proved to the satisfaction of the judge, that the service of such summons has come to the knowledge of the defendant ten clear days before the said return day.”

Without discussing how far the latter regulation may be considered expedient or necessary, we may venture to remark, that it does not appear to be peculiarly complicated, or to suggest any extraordinary difficulties of construction. The common

law practice in actions of ejectment, when the declaration has not been served on the tenant in possession personally, but it is shown to the satisfaction of the court that it has come to his knowledge in due time, furnishes a clear and obvious analogy, and the reported cases on this branch of practice, it might be imagined, would guide the judges of the County Courts in deciding as to the nature of the evidence necessary to show that the service of the summons had “come to the knowledge of the defendant ten clear days before the return day.” We have only heard of a single instance in which any judge of a County Court has adopted this view. In nearly every district a different rule is laid down, as to what evidence shall be necessary to satisfy the judge that the summons has come to the knowledge of the defendant. Some judges are satisfied, if the bailiff’s assistant swears that he left the summons at the defendant’s supposed residence more than ten days before the return day. It is thence assumed that the service must have come to the defendant’s knowledge in due time. Other judges require, that the summons-server should swear, that he requested the person to whom he delivered the summons to deliver it to the defendant upon his return; whilst other judges require evidence that some inmate of the defendant’s house promised to deliver the summons to the defendant upon his return home; and we understand one or more of the judges have been so strict as to require some evidence of subsequent declarations made by the party with whom the summons was left that it had come to the defendant’s hands. If the proof of service is



insufficient, it is the practice, we understand, of many judges to dismiss the summons absolutely, leaving the plaintiff to commence *de novo*; but we have heard of cases where the consideration was adjourned to give the plaintiff an opportunity of effecting service without requiring him to issue a new summons.

The statute<sup>a</sup> declares, that "all pleas of personal actions where the debt or damage claimed is not more than 20*l.*, whether on balance of account or otherwise, may be holden in the County Court;" and, as our readers have learned, by a decision published last week, one of the new judges conceives that this provision enables the County Court to entertain a suit for a portion of a plaintiff's claim, reserving to the plaintiff the right of enforcing the other portion of his claim by a second, or several successive pleas.<sup>b</sup> For example, it is said, that if a plaintiff claims 100*l.* for five parcels of goods of equal value, delivered at different times, he is not bound to enforce the claim by one action, but may enter five different pleas in the County Court, and recover upon each to the extent of 20*l.* So, if 60*l.* be claimed for three quarters' rent, it is held that the plaintiff may enter a distinct plea for the rent due in respect of each quarter, and in this manner recover the full amount due to him. It was understood when the measure was before parliament, that the 63rd section was introduced into the act expressly to prevent such a construction. That section enacts, "that it shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said courts, but any plaintiff having a cause of action for more than 20*l.*, for which a plea might be entered under this act if not for more than 20*l.*, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding, 20*l.*, and the judgment of the court upon such plea shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly." It is now contended, that effect is given to the clause last cited by holding, that when a single cause of action exceeds 20*l.*, if the plaintiff proceeds in the County Court, he must abandon the surplus, but that he is not bound to include separate causes of action exceeding 20*l.* in one plea, but

may bring distinct pleas in respect of each cause of action. If this construction of the act be correct, it is evident the new courts will have a more enlarged jurisdiction than was at first supposed, and by the splitting of demands in the manner suggested, pleas may be multiplied to an extent which will give the judges of the County Courts established in populous districts an income derivable from fees far exceeding the sums paid by way of salary to the judges of the superior courts at Westminster. An erroneous impression prevails, that the emoluments receivable by the judges of the new courts is limited to 1,200*l.* per annum, and that the clerks only receive 600*l.* per annum. As the matter now stands, the judges, clerks, and high bailiffs, are entitled, under the 37th section, to receive and keep all the fees payable under the schedule marked D, and although the amount of fees must vary in every district, as already hinted, it is said, that the fees receivable by the judges under that schedule in some districts will quadruple 1,200*l.* per annum, and in such cases the fees of the clerk and high bailiff will be in the same increased proportion. By the section last referred to, the Secretary of State, with the consent of the Treasury, may diminish the amount of fees, and under section 39, her Majesty, with the consent of her Privy Council, may order the judges, clerks, bailiffs, and officers of the new courts to be paid by salaries instead of fees, and in that case, (under section 40,) the salary to be received by a judge is not to exceed 1,200*l.*, and that of a clerk 600*l.* per annum, exclusive of the salaries to clerks employed in the business of the courts, and other expenses incidental to the office, and exclusive of the sum that may be allowed by the Treasury for travelling expenses, with reference to the size and circumstances of each district.

It appears to be contemplated by the act, that the bailiff may hereafter be paid by a fixed salary instead of fees, as well as the other officers. From the great anxiety displayed, however, in protecting the rights of the bailiffs in respect of fees, we apprehend it is not anticipated this useful class of officers are speedily to be reduced to fixed salaries. In the schedule D, annexed to the act, under the title of "High Bailiff's Fees," in the first line we find, that the high bailiff is entitled to fees, varying from 2*s.* to 1*s.* 6*d.*, according to the amount of the plaintiff's claim, for "calling any

<sup>a</sup> 9 & 10 Vict. c. 95, s. 58.

<sup>b</sup> See decision in our last, p. 126.

cause." It has already been ascertained in the County Courts, as in every other court for the recovery of debts, that a large proportion of the suits which are commenced do not come to a hearing, but are arranged between the parties out of court. In such cases, the parties do not in general go through the idle form of appearing at the time appointed for hearing, and if the bailiff's fee for "calling" the cause were postponed to this stage, he might call upon suitors for his fees as he might "call spirits from the vasty deep," without any security that the one more than the other would respond to his call. To obviate this difficulty the practice has already been established, we are informed, in many districts, of obliging the plaintiff upon entering his plaint to lodge the bailiff's fee for "calling the cause." By this prudent arrangement, if the debt should be paid, or the matter in dispute amicably adjusted, before the day fixed for hearing, the high bailiff "moults no feather." Some persons are so unreasonable as to complain of this arrangement, and to ask, would it be tolerated, if a suitor upon applying for a writ of summons to commence an action in one of the superior courts, was informed that he must then deposit the court fees payable upon a trial?

Other instances have been communicated where the judges of the County Courts are said to have evinced a disposition diametrically opposed to that which prevails elsewhere, by discouraging the amicable arrangement of claims between parties, without the intervention of the court, and recommending, if not personally, at all events by their officers, that suitors should in every case fortify their arrangements for payment by embodying them in an order of the court. The granting of an order in every case is preceded by the payment of certain prescribed fees, varying in amount from three pence to three shillings, payable as well to the judge as the clerk; and it has been stated, that the schedule of fees in this particular is so ambiguously framed as to have already occasioned a diversity of practice in regard to the fees claimed upon "entering and drawing up every judgment and order."

Whatever may be the merits or defects of the measure in other respects, it must be considered matter of regret, that when the experiment of the New County Courts was resolved upon, an element of suspicion should unnecessarily be mingled in their constitution, by enacting that the compen-

sation of the judges and other officers should be dependent upon fees, and the amount of their emoluments be increased or diminished in proportion to the number of plaints entered. Although, in point of fact, no sordid considerations should ever enter into the minds of those upon whom the duty is devolved of making practical regulations and pronouncing judicial decisions in the new courts, it may sometimes be suggested that they have acted with a view to the multiplication of suitors, or with an inordinate regard to the pecuniary interests of their own officers. To be subject to such an imputation, however unfounded, must be painful and embarrassing to men of delicate and honourable feeling. As it does not require the authority of parliament, but may be effected at the instance of the executive government, by means of an order from her Majesty in council, we hope to see the judges and officers of the County Courts speedily relieved from the invidious distinction of having their services compensated by the payment of a multitude of fees of small amount instead of by fixed salaries.

We cannot conclude this notice without referring to the application made to Mr. Justice *Wightman*, sitting in the Practice Court of the Queen's Bench, on the 2nd June, and which appeared in all the daily papers on the following day, at the instance of Mr. William Ablett, who held the office of Clerk of the Court of Requests at St. Albans, (under the 25 Geo. 2, c. 38,) since the year 1825. It appeared that the judge of the New County Court for the district which includes St. Albans, had appointed Mr. Edward Gibson as clerk, and the motion in the Bail Court was for a rule to show cause why an information in the nature of a *quo warranto* should not be filed against Mr. Gibson for exercising the office of Clerk of the County Court at St. Albans. We are informed that the rule has since been enlarged, and is not likely to be discussed until Michaelmas Term. Without presuming to offer any opinion upon the legal question involved in Mr. Ablett's case, we believe we give expression to the universal feeling which prevails throughout the profession, when we state, that in the appointments under the Small Debts Act great hardship and injustice has been inflicted on individuals by disregarding the claims of old and meritorious officers. In reference to this subject, we commend to our readers' attention the discussion in the House of Commons on Tuesday

evening last, in reference to Mr. Drew's case, the particulars of which we published in a former number. It is satisfactory to know that, beyond the circle of government retainers, it appears to be universally considered that Mr. Drew has been unfairly and unjustly treated.

## TAXATION OF PARLIAMENTARY COSTS.—LAW OF ATTORNEYS.

THE bill relating to the taxation of costs on private bills in the House of Commons has been for a time suspended, but at the time we write may be again before the house.<sup>c</sup>

It is highly objectionable in principle, and would be found injurious in practice. It seeks to establish a new board for the taxation of costs on bills in the House of Commons, superseding that of the Court of Chancery, and constituted of persons differently qualified. It will be recollected, that in 1842, when the Six Clerks' Office was abolished, and amongst others, taxing Masters appointed, it was provided, in effect, that the future members of that board should be solicitors of 12 years actual practice. The Attorneys and Solicitors' Bill was also before parliament, but did not pass till 1843, and it was of the nature of a compact between the legislature and the profession that the taxing masters being solicitors of experience, every species of costs (not before taxable) should be brought within the jurisdiction of the court. Not only conveyancing, but parliamentary costs, were comprehended within the arrangement, and it has been the practice since that time to refer parliamentary costs to one of the taxing masters, and all parties have been satisfied with the result. It is competent, not only for the client, but for third parties who may be liable to pay costs, to obtain a taxation, not only of the costs arising in the House of Commons, (to which the bill is confined,) but those also in the House of Lords.

The proposed measure is therefore not only uncalled for—inflicting the needless expense of new officers—but is a violation of the arrangement by which it was provided that solicitors, as the only duly qualified persons, should be appointed to fill the office of taxing masters. The bill authorizes the Speaker to appoint whom he pleases.

The bill also proposes, that the report of the taxing officer shall be final and without appeal; that all costs and charges incurred on behalf of corporations or trustees having no pecuniary interest in opposing bills shall in all cases be compulsorily taxed; and that any five or more shareholders of any joint-stock company may require the taxation of the charges of solicitors for promoting or opposing private bills in the House of Commons; and there are various other provisions by which the right of solicitors to recover from their clients their professional charges for business transacted by the direction of such clients will be restricted, and in some cases entirely taken away.

Under the provisions of the Attorneys and Solicitors' Act there is an appeal from the decisions of the taxing masters of the Court of Chancery to the court itself. In the present bill this principle will be departed from, and an inexperienced tribunal appointed for the taxation of costs, without the power of appeal in case of error or mistake, to which all such tribunals are practically admitted to be liable. If an appeal is to be allowed, as in all other similar cases, there is no existing tribunal to which it can be so satisfactorily referred as to the Court of Chancery which now has the jurisdiction; and therefore, the main objects of the bill can only be satisfactorily attained by extending the provisions of the Attorneys and Solicitors' Act to the taxation of costs incurred for business transacted by all solicitors and parliamentary agents.

It is remarkable that the evidence taken by the committee appointed to consider the subject of private bills has not been printed.

The Incorporated Law Society has presented a petition against the bill, ably stating the above and other objections, and praying to be permitted to adduce such evidence as may appear to them necessary for the purpose of proving the injustice and inconvenience which would be the result of the bill if passed into a law as it now stands.

The following are the reasons of the Incorporated Law Society against the bill:—

*Bill read 1st, 7th May; 2nd, 10th May; went through committee, 11th May.*

“The bill is founded on the recommendation of a Report from the Select Committee on Private Bills, proceeding upon some evidence

<sup>c</sup> See the Bill, p. 70, ante.

which has not been printed, and to which the petitioners have therefore not had access.

"The petitioners, as representing the interests of all the solicitors practising in England and Wales, object to the bill for the following among other reasons:—

"1stly.—Because it is thereby proposed to appoint a new and permanent tribunal, without appeal, for the taxation of the bills of all solicitors and parliamentary agents, for a part of the parliamentary business transacted by them, viz., so much of it as is transacted in the House of Commons, notwithstanding that there is an already existing tribunal, (the Taxing Masters of the Court of Chancery,) which, under the provisions of an act passed in 1843, (6 & 7 Vict. c. 73,) has jurisdiction to tax the whole of the bills of all solicitors practising in England and Wales, *including all business transacted in both houses of parliament*; and because the taxation of part of a bill only, and the taking of a partial account between the solicitor and the client in cases where the whole bill and the whole account relate to one and the same matter, must inevitably cause inconvenience and injury to both parties.

"2ndly.—Because the act of the 6 & 7 Vict. c. 73, under which the party chargeable with the bills of solicitors practising in England or Wales for business transacted in either house of parliament has a right to require the taxation of such bills, has been found to answer most effectually the purposes for which it was framed, after mature consideration of the whole subject by the judges of the courts of law and equity, and by the solicitors and attorneys who are affected by it; and because the Taxing Masters of the Court of Chancery, on whom the duty of taxing all parliamentary costs devolves, and who have had all the experience consequent upon the taxation of such costs to a very large amount, and to whom the legislature specially confides the taxation of the costs of all Estate Acts, a number of which are passed every session, have executed their duty to the satisfaction of the court, the clients, and the solicitors.

"3rdly.—Because the establishment of a new and permanent tribunal for the taxation of parliamentary costs would be a *breach of the compact* upon the faith of which the solicitors of England and Wales waived the objections which they might have made to the provisions of the act 6 & 7 Vict. c. 73, which rendered their costs for parliamentary, conveyancing, and general business liable to taxation, *to which such bills were not previously liable*, in consideration that such bills should be taxed by the Taxing Masters of the Court of Chancery, as is provided by that act.

"4thly.—Because there ought to be an appeal from all tribunals of the nature proposed to be created by the bill; and such appeal can only satisfactorily lie to the Court of Chancery, which already has the jurisdiction in similar cases.

"And 5thly.—Because, although the act of the 6 & 7 Vict. c. 73, extends only to solicitors

practising in England and Wales, and therefore the costs of other solicitors and parliamentary agents cannot be taxed under it, yet the Taxing Masters of the Court of Chancery have hitherto, under the Speaker's appointment and the provisions of the act 6 Geo. 4, c. 123, taxed all the costs which the Speaker has been called upon to refer for taxation under that act, with satisfaction to the Speaker and to all parties interested; and they are ready and willing to undertake the duty of taxing all costs which, under the provisions of the bill now before the house, are to be rendered liable to taxation; and this obvious course will not be attended with any increase of expense, present or future, to the public.

"It is understood that the other objectionable provisions contained in the bill are to be abandoned, and consequently the petitioners make no observations upon them.

"The petitioners therefore submit that all the objects professed by the bill can be satisfactorily attained without the appointment of any new officers, and without any expense to the public, by extending the provisions of the 6 & 7 Vict. c. 73, to the taxation of costs incurred in the House of Commons; and they confidently rely on the justice and wisdom of parliament for preventing the public from being permanently saddled with the expense consequent on the creation of a new office which they have shown to be totally unnecessary."

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

WE understand that the committee of management are proceeding actively in maturing the plan of this society. It will, of course, be necessary to enlarge the committee, and include within it members practising in all the populous districts, and to form sub-committees for carrying out the various details stated in the address, and others which are essential for successfully accomplishing the purposes of the association.

It cannot be too often pointed out that the great use of this association consists in the union of town and country solicitors for the benefit of the whole profession. No doubt much that it seeks to attain might be done by the Incorporated Law Society in London, and by the Country Law Societies in their several districts; but there is much that can only be accomplished by uniting the influence of both classes. The separate society may aid the joint body. The latter will leave to the former whatever can be effectually done in their several localities. The Metropolitan and Provincial Association will, of course,

chiefly attend to those subjects and to that course of proceeding which can be more completely effected by the united body.

## CONSTRUCTION OF ATTORNEYS AND SOLICITORS' ACT.

### DELIVERY OF CONVEYANCING BILL BEFORE THE STATUTE.

LORD *Denman* delivered the judgment of the Court of Queen's Bench, in Hilary Term last, upon a case argued in the preceding Trinity Term, involving some points of great importance in reference to the right of an attorney or solicitor to maintain an action for conveyancing business done before the passing of the statute 6 & 7 Vict. c. 73.<sup>d</sup>

The opinion of the court was required under the following circumstances:—Mr. Brooks, a solicitor, brought an action in assumpsit for work and labour and upon an account stated, and the defendant pleaded that no bill was delivered as by the statute required, to which the plaintiff replied, that a bill was delivered *modo et forma*, without noticing the words in the plea, "as by the statute required." At the trial before *Coleridge, J.*, it appeared that all the items in the plaintiff's bill were for conveyancing business done previous to the 5th August, 1840, and that on that day the bill was transmitted to the defendant, inclosed in a letter signed by the plaintiff, and referring to the bill. The action was not commenced until the month of January, 1844. Upon this state of facts it was contended on behalf of the plaintiff—1st, that the plea was bad, for not stating that the work had been done since the passing of the act; and 2ndly, that if the statute required the delivery of a bill where the charges were incurred before the passing of the act, it was satisfied by a delivery before the act, such as the act requires. On the other hand, it was insisted, that the object of the statute clearly was to render conveyancing bills taxable like bills containing other charges, and that as the plaintiff's bill for conveyancing was not taxable before the statute, a delivery of the bill before the statute was not a compliance with the statute. As to the objection that the plea omitted to state that the work was done after the passing of the statute, such statement was unnecessary, as the statute

was retrospective, and the plea followed the words of the 37th section.

Upon the first point the court determined, that the plea was sufficient without stating that the work was done after the passing of the statute 6 & 7 Vict., as the court had already decided, in a case of *Scadding v. Eyles*,\* that the stat. 6 & 7 Vict. was retrospective in its operation, and that it was immaterial in this respect whether the charges contained in the bill were taxable or not before the passing of the act.

The second question, whether a delivery before the passing of the statute was a sufficient compliance with the statute? depended upon the construction of the 37th section. That section enacts, "that from the passing of the act, no attorney, &c., shall commence or maintain any action for the recovery of any charges for any business done by him, until the expiration of one month after such attorney shall have delivered unto the party to be charged therewith, or sent, &c., a bill of such fees, &c., and which bill shall either be subscribed with the proper hand of such attorney, &c., or be inclosed or accompanied by a letter subscribed in like manner referring to such bill." The words "shall have been delivered" were general, and there had been a literal compliance with them as a bill had been delivered. Still, the object of the statute must be considered: it required a delivery that the party charged might have a taxation, if desired, within one month. Now, a delivery of a conveyancing bill before the statute had not the effect which the statute contemplated. The party charged could not procure a taxation of such a bill within a month, nor was the attorney bound to wait a month before he commenced an action on such a bill. It would be entirely defeating the retrospective operation of the statute to hold a delivery before the passing of the act effectual in the case of a conveyancing bill. It might be otherwise in the case of a taxable bill; such a bill may fall within the operation of the saving in the first section, as being "a thing done before the passing of the act;" but the delivery of a bill of charges incurred in conveyancing was not a thing done under any of the repealed statutes. Upon these grounds the court was of opinion, that the delivery of a conveyancing bill before the statute 6 & 7 Vict. c. 73, did not satisfy the requirements

<sup>d</sup> *Brooks v. Bockett*, reported 16 Law Jour. 178, Q. B.

\* 15 Law Jour, 364, Q. B.

of the statute. In coming to this conclusion, the court observed, that it was in some sense undoubtedly true, as suggested in the argument, that although an attorney might have complied with all that the statute required, before it passed, if he were bound to deliver his bill anew and wait a month before he commenced his action, the Statute of Limitations might intervene and bar him of his remedy. It was equally true and equally inconvenient, that an attorney whose demand was only for conveying, and who had delivered no bill, and waited until within less than one month of the expiration of six years, should be barred by the statute without any default of his own, as no act (before the 6 & 7 Vict.) required him to deliver a bill or wait a month. The inconvenience suggested, however, could not be obviated, without holding that the 37th section was not retrospective, and the court had already come to an opposite conclusion.

Upon these grounds a rule was made absolute to enter a verdict for the defendant.

It will be perceived from this analysis of the judgment of the Court of Queen's Bench, that no distinct opinion was pronounced as to the sufficiency of the delivery of a bill containing taxable items before the statute; but the case is a direct authority, that an action cannot be maintained upon a bill rendered taxable for the first time by the statute 6 & 7 Vict., unless the attorney has delivered a bill, as required by sect. 37, since the 22nd August, 1843, and waited one month after such delivery.

In the present state of the law, perhaps it will be expedient, as matter of prudence, not to rely in any case upon the delivery of a bill antecedent to the day named, when the statute received the Royal Assent.

It ought, perhaps, to be added, that the judgment in *Brooks v. Bockett*, is only to be considered as embodying the opinion of Lord Denman and Justice Coleridge on the case, the other judges of the court not having heard the arguments.

## TAXES ON THE ADMINISTRATION OF JUSTICE.

THE Select Committee of the House of Commons, of which Mr. Watson, (Q. C.,) is the chairman, holds its sittings twice a week, and they have already examined

several witnesses. The inquiry is very comprehensive:—it includes

1. The taxation of suitors in the courts of law and equity by the collection of fees, and the amount thereof.
2. The mode of collection.
3. The appropriation of fees in the courts of law and equity.
4. The like in all inferior courts.
5. The like in the courts of special and general sessions in England and Wales.
6. The salaries and fees received by officers of those courts.
7. Whether any, and what, means can be adopted with a view of superintending and regulating the collection and appropriation of the fees.

The following has been added to the original order of the house:—

8. To include within the inquiry the Ecclesiastical Courts and the Court of Admiralty.

A change having taken place, we subjoin the names of members now constituting the committee:—

Mr. Watson, Sir James Graham, Mr. Attorney-General,<sup>a</sup> Mr. Solicitor-General, Sir Frederick Thesiger, Mr. Stuart Wortley, Mr. Romilly, Mr. Walpole, Mr. Bickham Escott, Mr. Roebuck, Mr. Parker,<sup>a</sup> Mr. Hume, Sir John Hanmer, Mr. Ewart, Mr. Henley.

This reference is undoubtedly one of the most important that was ever made by either house of parliament. The committee appear to be particularly well constituted, and are evidently disposed to carry out most fully the objects of the house. The enormous amount of these "taxes on justice," and the highly objectionable way in which they are levied, are grievances calling loudly for redress. In numerous instances they operate as a total denial of justice, and in others drive the suitors to submit to unjust compromises.

It is the duty and the interest of every practitioner to aid the important labours of the committee by every assistance and information in their power. We are glad to hear that the council of the Incorporated Law Society have tendered their services, and that the committee have been pleased to accept them. Some of the members of the council or society are in attendance at every meeting of the committee.

<sup>a</sup> It is intended to substitute Sir William Molesworth and Mr. Christie for the Attorney-General and Mr. Parker.

Much time must be necessarily occupied in collecting all the details. The facts bearing on the working of this vast fee-taking system will, of course, be thoroughly sifted, and the opinions of the most competent persons will, no doubt, be collected.

It would be very desirable, if the committee should deem it proper, to report the evidence from time to time to the house, and allow it to be published for the information of the public and the profession, and we think the inquiry would thereby be materially assisted.

## REPORT OF THE SELECT COMMITTEE ON RAILWAYS.

THE Select Committee appointed to consider whether it is expedient that any measures should be adopted for suspending further proceedings in all or any of the Railroad Bills in the present session; and for enabling the parties, under certain conditions, to proceed with the same in a future session of parliament; and also, whether it is advisable that any further provisions should be made in the standing orders of the house relative to bills for the construction of railroads; and who were empowered to report their opinion thereon, from time to time, to the house;—have considered the matter referred to them, and agreed to the following resolutions:—

1. That the promoters of all railway bills in the present session of parliament, shall be empowered, on the second reading, or on the completion of any subsequent stage of any such bill, to suspend any further proceeding in the present session, with the option, under the following conditions, of proceeding with the same bill in the next session of parliament, at the stage where the bill shall be now suspended.

### *Conditions.*

The promoters of such bills are to give notice in the Private Bill Office, on or before the 18th day of June; or if the bill shall be in committee, then within six days of the report of the committee, of their intention to suspend any further proceedings thereon, on the completion of some subsequent stage of the bill.

The promoters of such bills are to give notice by advertisement for three successive weeks, in October and November, in the London, Edinburgh, or Dublin Gazette, as the case may be, and in the local paper or papers usually in circulation in the part of the country through which the line of railway is proposed to pass, of their inten-

tion to present a petition for the re-introduction of any such bill.

Upon a petition for leave to bring in a railway bill being presented during the session of 1848, and referred to the examiner of petitions, he is to examine whether the petition be the same in substance as any petition for the same purpose, and from the same parties, which was presented in the session of 1847; and in that case, whether any bill brought into the house in pursuance of such petition in the session of 1847, was pending in either house of parliament on the termination of such session; and if so, whether a subscription contract, as required by the standing orders, binding in the usual way the subscribers to the undertaking, has been entered into, and is valid at the time of such inquiry, and whether the deposit of 10l. per cent. upon such subscriptions is lodged in the manner required by the standing orders.

In such case, and on proof of such notice having been given as aforesaid, and if it appears that such bill had, in the session of 1847, been suspended in the House of Lords, or in the House of Commons, on or after the second reading, the standing orders, with respect to any such bill, are to be held to have been complied with.

The time between the second reading of any such bill and the meeting of the committee thereon, is shortened to three clear days, the parties to give the regular notices in the Private Bill Office.

In case such bill shall have been reported in the session of 1847, the committee on the bill are to examine whether the bill be in every respect the same as such former bill at the last stage of its proceeding in the house in the session of 1847, and in such case no evidence is to be received by such committee; and on the reception and adoption by the house of a report from such committee, that the bill referred to them is in every respect the same as such former bill at the last stage of its proceeding in the house in the session of 1847, such bill may be ordered to be ingrossed without any further proceeding in respect thereof.

2. That the deposits made in respect of all railway bills, the proceedings on which shall have been suspended, shall be returned to the depositors; but that before proceeding in a future session, deposits to the same amount shall be again duly paid in, according to the standing orders of the House of Commons.

3. That a clause shall be inserted in every railway bill, in the present and every future session of parliament, prohibiting the payment of any interest or dividend in respect of calls (except the interest by way of discount on subscriptions prepaid, agreeably to 8 Vict. c. 16, s. 24), out of the capital authorized to be raised in such bill, either by means of calls, or of any power of borrowing contained therein.

4. That in all cases of application to parlia-

<sup>1</sup> The following are the names of the members of the committee:—The Chancellor of the Exchequer, Sir James Graham, Mr. Hume, Mr. Hudson, Sir George Clerk, Mr. Charles Russell, Mr. Strutt, Mr. Chaplin, Mr. Ellice.



ment by existing railway companies, either for powers to construct branches or extensions, or to contribute towards the expense of constructing other lines of railways, a subscription contract for three-fourths of such additional capital as may be required for these purposes, shall be given in, beyond the capital authorized for the existing lines, and deposits shall be duly paid thereon.

5. That a clause shall be inserted in every railway bill in the present and in every future session of parliament prohibiting any railway company from paying, out of the capital which they have been authorized to raise for the purposes of any existing act, the deposits required by the standing orders to be made for the purposes of any application to parliament for a bill for the construction of another railway.

6. That in every bill of the present session containing powers of purchase, sale, lease, or amalgamation, a clause shall be inserted prohibiting any company from exercising such powers until they shall have proved to the satisfaction of the railway commissioners, that they have paid up and expended, for the purposes authorized by their acts, a sum equal to one-half of the capital authorized to be raised thereby.

7. That in future sessions of parliament no powers of purchase, sale, lease, or amalgamation, shall be contained in any act for the construction of a railway.

8. That in future sessions of parliament no powers of purchase, sale, lease, or amalgamation, shall be given to any railway company or companies, unless previous to their application to parliament for such purpose they shall have proved to the satisfaction of the railway commissioners, that they have respectively paid up and expended, for the purposes authorized by their act, a sum equal to one-half of the capital authorized to be raised thereby.

9. That no railway company shall in the present, or any future session of parliament, be authorized, except for the execution of its original line, to guarantee interest on any shares which it may issue for creating additional capital, or to guarantee any rent or dividend to any other railway company, until such first-mentioned company shall have completed and opened for traffic its original line.

10. That in bills in the present, or any future session of parliament, for the amalgamation of railway companies, the amount of capital created by such amalgamation shall in no case exceed the sum of the capitals of the companies so amalgamated.

11. That in bills in the present, or any future session of parliament, empowering any railway company to purchase any other railway, no addition shall be authorized to be made to the capital of the purchasing company, beyond the amount of the capital of the railway purchased; and in case such railway shall be purchased at a premium, no addition on account of such premium shall be made to the capital of the purchasing company.

7th June, 1847.

## SELECTIONS FROM CORRESPONDENCE.

### COUNTY COURTS.

SIR,—I agree with those who are of opinion that the provisions of the New County Courts Bill, if not made to exclude the legal profession from the court practice, will have that effect. Cheap law and the existence of a respectable and well-educated class of practitioners I hold to be incompatible. As every man is worthy of his hire, not excepting the legal labourer, the privilege of appearing provided for in the act seems to me as of little worth, rather a disabling clause than a boon. However, I am far from opposing cheap justice, though it may be inconsistent with professional profit; on the contrary, I would rather that the profession were excluded altogether than that such an injury should be inflicted on society.

The expense of administering justice has always been great, principally from the difficulty which exists of making laws that may be easily understood. The costs of making are small in comparison to those incurred in expounding laws.

Amongst others, barristers' fees, those for consultations, arbitrations, and for the "attendances and advisings thereon" of attorneys, are no trifling auxiliaries in the legal sums total. The new bill proposes (virtually, if not openly,) to abolish these fees, and with them the necessity for the practitioner's intervention. This will nearly exclude the advocate, for few of the profession are known to work without pay, and the opinion of those who do is considered of little worth. The uncertainty of the law to a degree will always remain, as long at least as man's imperfection lasts—that period I for one decline to measure. The change contemplated by the new act will amount to this, that the present practitioners will be replaced by others. The judges, their clerks and officers, will alone have the conduct of the suit from the entering of plaints to their hearing, and from the service of process to its execution. I have long since been of opinion that the state should provide judges to expound and officers to enforce the law.

### A PRACTITIONER.

### REGISTRY OF DEEDS.

SIR,—Your "Constant Reader" is surely rather erroneous in supposing in the case he puts, "That A.'s judgment would still remain a charge on the premises in the hands of T," after a lapse of 20 years and no registry, for though at the time B. purchased there might have been a charge upon the estate, still 1 & 2 Vict. enacts, that the registry shall be null and void after five years, unless," &c. At the expiration therefore of the five years, and no registry, the estate is freed from the incumbrance by the registry affecting it,—any notice that B. might be presumed to have had coming within 3 & 4 Vict. c. 82, s. 2. The construc-



tion your correspondent contends for would make the Registry Act itself a dead letter.

J. W. D.

# NEW COUNTY COURTS ACT.

SIR,—In confirmation of the doubts expressed by you as to the working of the New County Courts Act, and more especially as to that portion of it which takes from the plaintiff and his attorney the service of the original summons, whilst it subjects him to material prejudice if a personal service be not effected, (*which is neither compulsory nor advantageous to the bailiff of the court.*) I desire to state an instance that has occurred to me in one of the metropolitan courts.

At my own suit I brought an action for a bill of costs against a person who might easily have been served with the summons, and, to prevent misadventure in the service, I sent a clerk twice to the bailiff with particular instructions how he might easily meet with the defendant. Instead of taking the slightest trouble about the matter, the bailiff merely knocked at the defendant's door, and not finding him at home, at once, without further endeavour, put a copy of the summons into a servant's hand. The defendant did not appear on the summons, and the result is, that I shall be driven to obtain another summons, which must be personally served before I can get a warrant of committal.

Upon my complaint to the judge, he merely stated, as to one part of it, that the officer was not paid extra for each service, and therefore that I was in error in supposing it to his advantage to take no trouble to effect personal service. If, however, that particular officer whose duty it is to serve the summons be not benefited, the fees of the court are surely enhanced by the number of the proceedings necessary to be taken.

There was another point, however, in the case to show the injurious operation of the statute upon suitors and upon the profession. I attended with two of my clerks to prove the retainer; that the work was done; and that the charges were reasonable; but the judge would allow me only 5s. for one witness, (namely, the one who proved the delivery of the bill to the defendant,) and for myself, as a witness, and for my clerk who attended to prove the work done and the reasonableness of the charges, he would allow nothing,—stating that he should have been satisfied with my producing *my own books* containing entries of the attendances, &c., and that it was unnecessary for me to have had the second witness. A novel doctrine certainly, that one's own books are to prove the case without more!

The debt being under 5*l.*, of course, I could not get costs for my attendance as an attorney.

S. H.

## UNQUALIFIED PRACTITIONERS IN COUNTY COURTS.

SIR,—I perceive in your number of the 22nd

instant, an article in which a complaint is made of the judge of the new County Court at Sheffield, permitting unqualified persons, calling themselves agents and collectors, to appear for suitors in that court. I can assure you, that such practice is not confined to the court at Sheffield, but that in several of the Metropolitan County Courts the practice is permitted to a great extent, and particularly in the court at Clerkenwell, where any person stating himself to be an agent may appear: this I am prepared to prove to you, and enclose my card as a guarantee of my assertion.

I once undertook a case in that court, but have since, in conjunction with many others of my professional brethren, come to the determination not to attend any court where the seats of the advocates are occupied by a motley group of agents, debt collectors, hedge-lawyers, and pot-house pleaders,—a determination which all the respectable portion of the profession must, in duty to their position, come to.

I can only add, that the continual innovation which the law is now subjected to, tends greatly to deprive it of that honourable character which it ought to maintain, and I can only wonder at the supineness of the profession in submitting so quietly to the continued impositions upon it.

C. F. C.

## APPROACHING CLOSE OF THE SESSION AND DISSOLUTION OF PARLIAMENT.

It is confidently stated that the parliament will be prorogued about the 15th July, and that a dissolution will soon follow. It cannot be expected, therefore, that any important measure can now be completed.

The Debtor and Creditor Bill of the Lord Chancellor has just been printed. This and the Bankruptcy Bill, with that of Lord Brougham, are, of course, destined to stand over till another session. These are the only bills affecting the profession in the Upper House. The House of Commons Costs Taxation Bill is the most important professional project in the Lower House. Its promoter scarcely expect to make much way with it this session. If it should pass the Commons, the Lords can scarcely approve it, for the taxation is limited to the House of Commons business, and the Lords would, of course, consider whether, if a taxing board be necessary in one House, there ought not to be a similar one established in the Lords; but it is far too late to prepare and pass through both Houses measures of this kind. The Bill for the better administration of the Poor Laws is also of great public consequence, and will probably pass.

# **CANDIDATES PASSED AT THE EXAMINATION.**

**Easter Term, 1847.**

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &amp;c.</i>
Andrew, Frederick . . .	Edward Chippindall Milne, Manchester
Ashley, William Edward . . .	John Would Lee, Newcastle-upon-Trent
Attenborough, Winfield . . .	George Burnham, Wellingborough
Badger, Walter Samuel . . .	Thomas Badger, Rotherham.
Barras, Henry . . .	Ralph Walters, Newcastle-upon-Tyne
Bentley, George Wheeler . . .	John Brook Hyde, Worcester
Blake, Richard Henry . . .	John Payne, Milverton—George Faulkner, Bedford Row
Boyer, Richard . . .	Henry John Gauntlett, 16, Furnival's Inn—John Ellis Clowes, 10, King's Bench Walk
Boyle, Charles . . .	John Clarke Chaplin, Birmingham
Brown, George . . .	Henry Ashley, 9, Shoreditch
Bussell, Edward Reuben . . .	Francis Buchanan Hoare, 66, St. James Street, Westminster
Campbell, James . . .	John Edward Elworthy, late of Devonport, now of Plymouth—Nicholas Were, Plymouth
Cleave, William Cornish . . .	John George Smith and Francis Edward Smith, Crediton
Coates, Wallington . . .	Peter Eaton Coates, Stanton Court
Colt, George Nathaniel . . .	Rayner Winterbotham, Cheltenham—Thomas Edgcombe Parson, 61, Lincoln's Inn Fields
Cooper, John . . .	Samuel Cooper, Henley-upon-Thames
Cutler, John Walford . . .	Thomas Slaney, Birmingham
Darnton, Henry Thomas . . .	Alfred Higginbottom, Ashton-under-Lyne — Joseph Higginbottom, Ashton-under-Lyne
Dodd, Edward . . .	Thomas Morris, Warwick
Duncan, William Henry Egelstone . . .	Frederic Ouvry, 13, Tokenhouse Yard
Edwards, George Halliley . . .	George Edwards, Halifax—Samuel Moores, 25, Throgmorton Street
Evans, William . . .	John Fitchett Marsh, Warrington
Fenwick, John Clerevaux . . .	John Fenwick, Newcastle-upon-Tyne — Hugh Shield, 26, Queen Street, Cheapside
Gammon, Charles . . .	Samuel Lepard, 9, Cloak Lane
Gant, James Greaves Tetley . . .	Johnson Atkinson Busfield, Bradford
Gooding, Jonathan Robert . . .	James Winter, Norwich
Gray, Henry Andrews . . .	Robert Gray, 7, New Inn
Hall, John Elton . . .	James Wallace Richard Hall, Ross—George Cooke, Bristol; —William Wyke Smith, 16, Southampton Street, Bloomsbury
Hare, Evan . . .	Evan Morris, 2, Harcourt Buildings, Temple
Hawkins, Rich. Berens Bradford . . .	Thomas Bayerstock Merriuman, Marlborough
Hennmant, John . . .	John Peed, Whittlesey
Hill, Thomas Ames . . .	Henry Adolphus Septimus Payne, Axbridge
Hore, Edward Madge . . .	James Hore, 6, Lincoln's Inn Fields—Charles Frederick Hore, 6, Lincoln's Inn Fields
Jackson, Howard Wm. Mansfield . . .	Anthony Sheppey Greene, Lewes
Jarratt, William Otley . . .	Edmund Dade Conyers, Great Driffeld
Jeffreys, Charles . . .	Isaac Gilbertson, Bala—Samuel Edwardes, Denbigh
Joachim, Bristow . . .	Edmund Norton, Lowestoft
Jones, John Henry . . .	Charles Henry Smith, 13, Duke Street, Manchester Square
Jull, George Montagu . . .	Francis Smedley, 40, Jermyn Street
Lamb, William Frederick . . .	Robert Osborne, Bristol
Latcham, Charles . . .	Charles Arthur Latcham, Bristol
Lea, John Wildman Thomas . . .	Edward Richmond Nicholas, Wribbenhall
Lewis, James Price . . .	Philip Longmore, Hertford
Lucas, William . . .	Jonathan Nickson, Wem—Samuel Walmsley, Wem
Lumb, James . . .	William Lumb, jun., Whitehaven
Marsden, Joseph Daniel . . .	George Ledger Shaw, late of Friday Street, Cheapside — Frederick John Reed, Friday Street
Medland, William, jun. . .	Longmore and Sworder, Hertford—Thompson and Debenham, Salters' Hill
Morris, George, jun. . .	Charles Bowen Teece, Shrewsbury
Moss, John Thomas . . .	William Henry Rosser, 2, Dyers' Buildings, Holborn

Mott, Henry . . . .	John Howard Williams, 16, Bedford Row
Mullings, Thomas . .	Joseph Randolph Mullings, Cirencester
Owen, James Charles .	John Rowland, late of Wrexham—John James, Wrexham
Owen, Thomas . . . .	Edward Griffith Powell, Carnarvon
Payne, John . . . .	Edwin Eddison, Leeds—George Rawson, Nottingham
Phillips, William . .	Julius Partridge, Birmingham
Poole, William Thearsley	Richard Anthony Poole, Carnarvon—William Lowe, 2, Tanfield Court
Poole, William Tatchell Henry	John Slade, Yeovil—John Sherwood, 9, King's Bench Walk
Radcliffe, Reginald . .	George James Duncan, Liverpool
Rawlins, William . .	James Hodgson, 5, Lincoln's Inn Fields
Reynolds, Henry . . .	Edward Bower, Birmingham.
Roscoe, William . . .	Thomas Roscoe, Nether Knutsford
Rowlands, John . . .	John Finchett Maddock, Chester
Salmon, John . . . .	Thomas Carr, Newcastle-upon-Tyne—Mark Lambert Jobling, Newcastle-upon-Tyne
Sandford, William Mathews .	Joseph Sandford, Winchcomb—Gregory James Sarmon Tomkins, Cheltenham—Edward Washbourn, Gloucester
Selby, Francis Thomas . .	Ashley Maples, Spalding—William Edwards, Spalding
Shaen, William . . . .	William Henry Ashurst, 137, Cheapside
Shafto, John Cuthbert . .	John Pexall Kidson, Sunderland—John Kidson, Sunderland
Sheppard, Francis . . .	Alfred Goddard, 28, King Street, Cheapside
Slater, William . . . .	James Saunders, Chorlton-upon-Medlock and Manchester
Smith, Charles Joseph . .	Joseph Hockley, Guildford
Smith, Robert . . . .	Samuel William Haynes, Warwick
Stable, William Henry . .	Abraham Bass, Burton-upon-Trent
Stevens, John Robert . .	Christopher Stevens, Havant—Henry Walker, 5, Southampton Street, Bloomsbury—Thomas Newman Farquhar, Sydenham, and 65, Moorgate Street
Tarleton, Francis Willington .	John Willington Tarleton, Wednesbury—Richard Henry Tarleton, Birmingham—Frederick William Wilson, Sheffield
Taylor, Robert Wager . .	John Sandell, 22, Bread Street, Cheapside—William Strickland Cookson, 6, New Square, Lincoln's Inn
Tennant, Edmund . . . .	John Gates, Peterborough
Thurgood, George Frederick .	William Thurgood, Saffron Walden—William Watson Oldershaw, 7, Tokenhouse Yard
Tudor, James . . . .	William Boycot, Kidderminster
Turner, Alfred . . . .	William Henry Turner, 8, Mount Place, Whitechapel Road
Turner, Llewelyn . . . .	Richard Anthony Poole, Carnarvon
Vaughan, James Henry . .	Jonathan Elliott Gough, Hereford
Welstead, Frederick . .	Julius Gaborian Shepherd, Faversham
Wetherfield, George Manley .	John Thrupp, 2, Winchester Buildings, City
Whitfield, James Benning .	Joseph William Allan, 1, Frederick's Place, Old Jewry
Wilkinson, William . . .	George Brumell, Morpeth
Wright, Thomas . . . .	Armorer Donkin, Newcastle-upon-Tyne.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

## Courts of Equity.

## PLEADINGS.

[For the Decisions on the Construction of *Wills*, see p. 56, *ante*; *Law of Property and Conveyancing*, p. 74, *ante*; Construction of *Statutes*, p. 101, *ante*; *Principles of Equity*, p. 127, *ante*.]

## ABATEMENT.

*Dismissal*.—A suit having become defective, in consequence of the bankruptcy of a co-plaintiff, the defendant moved to dismiss absolute: *Held*, that the court on such a motion,

might order the plaintiff to supply the defect within a limited time, or in default, that the bill might be dismissed. *Ward v. Ward*, 8 Beav. 397.

## AMENDED BILL.

1. *After demurrer allowed*.—Where the defendant omitted to give the plaintiff notice at the proper time that a demurrer to the bill had been filed, and the plaintiff irregularly obtained an order as of course to amend his bill, on or before a certain day, which order he obtained after 12 days from the filing of the demurrer, but within 12 days from the time he received the notice, the Vice-Chancellor on a special motion, (made after the expiration of the former order,) restored the bill, and gave the plaintiff leave to amend; but the Lord Chancellor, on appeal, discharged the order. *Mathews v. Chichester*, 5 Hare, 207.

2. *Delay*.—In general an order of course to amend obtained at the Rolls in a cause attached to another branch of the court cannot be discharged, except for irregularity, or by the Lord Chancellor. But *quere*, whether the order might not be discharged at the Rolls, upon an application there, founded on an opinion expressed as to the merits of the case by the judge before whom the cause is. *Arnold v. Arnold*, 33 L. O. 566.

3. *Delay*.—An order to amend obtained after a notice of a motion to dismiss, in a case where there had been great delay in getting in the answer of one of the defendants, discharged as an attempt to evade the orders of the court though within the strict letter. *Foreman v. Gray*, 33 L. O. 586.

4. *Order of course*.—An order to amend which the plaintiff is entitled to obtain as of course, is considered as an order of course, though made on a special motion; and a second order to amend obtained as of course after the making of such an order is irregular.

The Master of the Rolls will not order amendments made under an irregular order to amend, to be taken off the file, if the cause is not at the Rolls. *Edge v. Duke*, 34 L. O. 11.

5. *Delay*.—*Costs*.—One order to amend may be obtained as of course, so long as the answer of any defendant to the bill remains outstanding, notwithstanding the service of a notice to dismiss, and great delay in getting in the answer of that defendant. Therefore, a motion to discharge such an order for irregularity was refused, but without costs. *Freeman v. Gray*, 33 L. O. 452.

#### ANSWER.

1. *Plea*.—*Purchase for valuable consideration*.—*Bill of exchange*.—If a bill, after stating the circumstances on which the plaintiff's equity is founded, charges that the defendant, before his title to the subject in dispute accrued, had notice of the several circumstances therein stated, an answer denying that charge in the same general terms is sufficient, notwithstanding it is filed to support a plea of purchase for valuable consideration. *Gordon v. Shaw*, 14 Sim. 393.

2. *Delay*.—*Order 43 of May, 1845*.—The order 43 of May, 1845, which directs that commissioners to take answers are to be made returnable without delay, does not preclude the answer from being filed, although delay may in fact have occurred. *Hughes v. Williams*, 5 Hare, 211.

3. *Correction of*.—Mode of altering and correcting the title of an answer, which purports to be the answer of several defendants, where such answer has been sworn by some of such defendants, but the others refuse to join in it. *Thatcher v. Lambert*, 5 Hare, 228.

And see *Trustees; Bankrupt*.

#### BANKRUPT.

*Assignees*.—*Supplemental bill*.—*Answer*.—When a defendant becomes bankrupt before he has answered the bill, and a supplemental bill is filed by the plaintiff against the assignees of the bankrupt defendant, stating the bankruptcy,

it is not proper for the plaintiff, after filing such supplemental bill, to issue process to compel the bankrupt himself to answer the original bill. It is the same when both the plaintiff and defendant become bankrupt before the defendant has answered the bill, and the supplemental bill is filed by the assignees of the plaintiff against the assignees of the defendant. The clerk of record and writs will, in such cases, give the usual certificate for setting down the cause, without any answer from the bankrupt being on the file. *Robertson v. Southgate*, 5 Hare, 223.

#### CHARITY.

*Form of suit to take accounts and settle a scheme*.—The proper form of suit to administer the funds of a charity is the information of the Attorney-General, but the trustees may file a bill against the Attorney-General to have the accounts of the charity taken, and to be personally discharged from liability in respect thereof, submitting to such account as the Attorney-General would be entitled to ask against them in an information; and in the same suit, if the Attorney-General desires it, the court will direct a reference for a scheme. *The Governors of Christ's Hospital v. The Attorney-General*, 5 Hare, 257.

#### CREDITOR'S SUIT.

1. *Supplemental bill*.—After decree in a creditor's suit, the plaintiff died, leaving no personal representative. The decree was ordered to be prosecuted, on the petition of another creditor, without a bill of revivor. *Brown v. Lake*, 2 Coll. 620.

2. *Proof of debt*.—In order to found a decree in a creditor's suit affecting real estate it is essential that the plaintiff's debt should be proved by interrogatories before the examiner. *Vernon v. Rudd*, 33 L. O. 405.

#### CROSS BILL.

1. *Security for costs*.—*Plaintiff out of jurisdiction*.—The plaintiff in a cross suit, (impeaching an instrument which the original suit seeks to enforce,) although residing out of the jurisdiction, is not bound as against the plaintiff in the original suit, to give security for costs. *Vincent v. Hunter*, 5 Hare, 320.

2. Reference to the Master, under the 122nd Order of May, 1845, to distinguish the parts of a cross bill which were of unnecessary length, and to ascertain the costs thereby occasioned. *Woods v. Woods*, 5 Hare, 229.

#### DEMURRER.

1. *Specific performance*.—*Railway scrip certificates*.—Demurrer to a bill against the provisional committee of a projected railway company for the specific performance of an agreement to deliver to the plaintiff a certain number of scrip certificates, allowed; there being no allegation in the bill that the defendants had in their possession any scrip to deliver, but statements from which the contrary might rather be inferred.

*Quere*, whether such an agreement is a sub-

ject for specific performance. *Columbine v. Chester*, 2 Phill. 27.

2. *Title to shares in mines.*—*Reference.*—To a vendor's bill for specific performance of a contract to purchase shares in mines, insisting that the plaintiff was not bound to give other evidence of his title to the shares than attested extracts from the cost-book or registers of the mines, and that the defendant had refused to accept such evidence, but not alleging that the plaintiff was unable to give other evidence of his title, the defendant demurred. *Held*, that as the plaintiff was not precluded from giving other evidence of his title, if necessary, the demurrer must be overruled. *Curling v. Flight*, 5 Hare, 244.

And see *Amended Bill : Parties*, 1, 6 ; *Privileged communication*.

#### DISMISSAL.

1. When, after notice to dismiss, the plaintiff files a replication before the hearing of the motion, the only order made is, that the plaintiff do pay the costs of the motion; and the practice is not altered by the General Orders of 1845. *Corry v. Curlew*, 8 Beav. 606.

2. *Before the hearing.*—*Costs.*—Order, on the application of the plaintiff, to dismiss his bill, with costs, against disclaiming defendants, without prejudice to any question how the costs should ultimately be borne. *Baily v. Lambert*, 5 Hare, 178.

3. *Replication.*—*Costs.*—Notice of motion by one of two defendants to dismiss the bill for want of prosecution. The plaintiff thereupon filed a replication to the answer of that defendant. The other defendant had not appeared. On the motion being made, the plaintiff undertook to dismiss the bill against the other defendant, whereupon the court refused the motion, but ordered the costs to be paid by the plaintiff. *Heasley v. Abraham*, 5 Hare, 214.

And see *Abatement*.

#### LIMITATIONS, STATUTE OF.

Plea of the Statute of Limitations to a bill of discovery in aid of an action of ejectment. *Scott v. Broadwood*, 2 Coll. 447.

And see *Mortgage*.

#### MISJOINDER.

See *Parties*, 2.

#### MORTGAGE.

*Redemption.*—*Statute of Limitations.*—A bill to redeem a mortgage made 25 years before, stated that the mortgagee entered into possession of the estate shortly after the date and execution of the mortgage deed, and had been in possession ever since.

*Held*, that the court could not intend from that statement that the mortgagee entered within the first five years after the date of the deed. *Baker v. Wetton*, 14 Sim. 426.

And see *Parties*, 3.

#### OUTLAWRY.

*Nul tiel record.*—*Exigent.*—*Entry on record.*—The sheriff's return upon the writ of *exigent*

that by the judgment of the coroner the defendant is outlawed, is not until entered on the roll, a sufficient record of the outlawry.

An information founded on the defendant's outlawry stated, that the defendant did not appear on the last proclamation, whereby he "became and was outlawed, and that the sheriff so returned the *exigent* accordingly," and that the judgment was entered and registered. The defendant pleaded *nul tiel record* in this form :—that no judgment of outlawry had been entered or registered, and that there was no record of the outlawry, leaving uncovered the allegation of the return of the writ certifying the judgment of outlawry. *Held*, that the plea was good in form. *Attorney-General v. Rickards*, 8 Beav. 380.

#### PARTIES.

1. *Demurrer.*—On a demurrer to a bill seeking payment of a legacy out of assets come to the hands of the defendant, who was the husband of the sole executrix, deceased: *Held*, that an allegation that all the testator's debts and the other legacies bequeathed by his will had been paid, and there were assets *ultra* in the hands of the defendant to satisfy the plaintiff's demand, was not sufficient to dispense with the presence of a personal representative of the testator: the allegation being one which, even if admitted by the defendant, the court would not take his word for.

The absence of a necessary party to any part of the relief prayed by a bill, though the prayer be in the alternative, is a good objection on demurrer.

An allegation that the defendant, being the person entitled to take out representation to a deceased party, refuses to apply for it, and impedes the plaintiff in procuring a grant of it to any other person, is not a sufficient answer to a demurrer founded on the absence of such representative; but *secus* if the bill alleges that the grant of representation is actually in litigation in the ecclesiastical court. *Penny v. Watts*, 2 Phill. 149.

2. *Principal and agent.*—*Misjoinder.*—Bill, for an account, by a principal against his agent and a person employed by the latter as his sub-agent, dismissed as against both, notwithstanding the sub-agent had had the entire management of the principal's affairs, and had communicated with him directly on the subject of them. *Lockwood v. Abdy*, 14 Sim. 437.

3. *Power of sale.*—*Right of administratrix to mortgage.*—An equitable mortgagee having taken from the administratrix of the mortgagor a legal mortgage, containing a power of sale, and having filed his bill to enforce specific performance of a contract for sale under the power, the court declined to entertain the suit, in the absence of the administratrix and the parties beneficially interested under the mortgagor. *Sanders v. Richards*, 2 Coll. 568.

4. *Bill of exchange.*—The acceptor of a bill of exchange, who had by the hands of the drawer as his agent paid the amount of the bill after it became due to an indorsee for value,

without procuring it to be delivered up, filed his bill against such indorsee for value, and a subsequent indorsee, charging that the indorsee to whom the payment had been made, had afterwards indorsed the bill to the other defendant, without consideration, in order to recover the money from the plaintiff a second time, and praying that an action commenced against him to the amount might be restrained, and the bill delivered up to be cancelled. Demurrer, for want of the drawer as a party to the suit, overruled. *Earle v. Holt*, 5 Hare, 180.

Cases cited in the judgment: *Kemp v. Pryor*, 7 Ves. 237; *Penfold v. Nunn*, 5 Sim. 405.

5. Where one of two executors proves a will, power being reserved to the other to come in and prove, the probate on the death of the executor enures to the other, and it is not necessary therefore in a suit for the administration of the testator's estate to bring before the court any other personal representative than the surviving executor. *Howard v. Gash*, 32 L. O. 396.

6. *Demurrer*.—A demurrer for want of parties cannot be sustained, because the bill asks some relief, which could not be given in their absence, if there is relief asked which could be given on the record constituted as it is. *Lewis v. Cooper*, 33 L. O. 45.

And see *Partnership*.

7. *Joint-stock companies*.—A bill by one member of a joint-stock company, on behalf of himself and the other shareholders, seeking to protect a common fund belonging to the company, but not praying for a dissolution, is not demurrable for want of parties, because all the other shareholders are not before the court. *Cooper v. Webb*, 33 L. O. 376.

#### PARTNERSHIP.

*Parties*.—When a plaintiff by his will prays the dissolution and winding up of a company, he cannot sue on behalf, &c. All the partners must be made parties. *Harvey v. Rignold*, 8 Beav. 343.

#### PAUPER.

A married woman may sue *in forma pauperis*. *Semble*, but the pauper order cannot be obtained as of course. *Coulsting v. Coulsting*, 8 Beav. 463.

Case cited in the judgment: *Dowden v. Hook*, 6 Beav. 399.

#### PLEA.

If a bill seeks relief as to more than one subject, the defendant may put in a plea as to each subject.

If an averment in a plea is inconsistent with the matter pleaded, the plea is bad.

A plea is bad, if it raises, by averment, an issue not raised by the bill. *Emmott v. Mitchell*, 14 Sim. 432.

#### PRIVILEGED COMMUNICATION.

*Demurrer by witness*.—To support a demurrer to interrogatories asking a witness to produce certain letters and documents, it is not

sufficient to allege generally that they were received in a confidential capacity; enough must be stated in the demurrer to show that they were confidential. *Walsh v. Trevanion*, 34 L. O. 62.

#### PRO CONFESSO.

Practice as to taking bills *pro confesso*. The "order" referred to in the 81st General Order of May, 1845, is not the "decree," that the bill be taken *pro confesso*, but the "preliminary order," that the clerk of records do attend with the record.

The object of the 81st Order of May, 1845, was to assimilate the practice where there is one defendant to that when there are several. *Brown v. Home*, 8 Beav. 607.

#### PUBLICATION, PASSING.

*Aid of a foreign court*.—This court will order publication in a suit to perpetuate testimony to pass in aid of a similar suit in the court of Ireland. *Morris v. Morris*, 33 L. O. 476.

#### REDEMPTION.

See *Mortgage*.

#### RE-HEARING.

The court will not, after the lapse of five or six years rehear an appeal upon the grounds of irregularity in the Master's proceedings in expunging scandal without reporting it. *Oldfield v. Cobbett*, 33 L. O. 281.

#### REPLICATION.

See *Dismissal*, 3.

#### REVIVOR.

*Remainder-man*.—An order to revive against the personal representatives of a defendant, in a suit whereby it is sought to affect a right which has descended to such representative in the character of remainder-man, will have no effect in respect to so much of the suit as seeks to affect such right. *Hilton v. Lord Granville*, 33 L. O. 500.

#### SERVICE OF COPY BILL.

1. Where a suit relates to a wife's separate estate, she, as well as her husband, must be served with a copy bill. (24th Ord. of Aug. 1841.) *Salmon v. Green*, 8 Beav. 457.

2. *Creditors under trust-deed*.—Bill by a debtor, who had conveyed property to a trustee for the benefit of his creditors, to have the trusts of the deed administered by the court, charging that one of the creditors had forfeited his debt by a breach of his covenant not to sue or molest the debtor. *Held*, that the creditors, parties to the deed, other than the trustee and the creditor charged with the breach of covenant, were sufficiently made parties by being served with copies of the bill under the 23rd Order of August, 1841. *Duncombe v. Levy*, 5 Hare, 232.

#### SPECIFIC PERFORMANCE.

See *Demurrer*.

#### \* SUPPLEMENTAL BILL.

23rd Order of August, 1841.—Course of pro-

ceeding where a defendant, served with a copy of the bill under the 23<sup>rd</sup> Order of August, 1841, dies before appearance. *Edington v. Bankham*, 2 Coll. 619.

See *Bankrupt; Creditor's suit*.

#### TRUSTEES.

*Separate answers.—Costs.*—On the dismissal of a bill with costs, the court referred it to the Master to inquire whether it was necessary or proper that several defendants, consisting of trustees and their *cestui que trusts*, appearing by the same solicitor, and having no conflicting interests, should file two separate answers to the bill. *Woods v. Woods*, 5 Hare, 229.

Cases cited in the judgment: *Van Sandau v. Moore*, 1 Russ. 441; *Walsh v. Dillon*, note to *Reades v. Sparkes*, 1 Moll. 13.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Lord Chancellor.

*Parker v. Peet*. April 30, 1847.

ADMISSION OF DEFENDANT'S STATE OF FACTS AFTER PUBLICATION OF DEPOSITIONS ON THE PLAINTIFF'S.

*A defendant who, under special circumstances, has not been required by the Master to put in a counter-statement to the plaintiff's state of facts, may be allowed after publication of the depositions on the latter, to bring in such counter-statement and examine witnesses for the purpose of supporting it, but not for the purpose of disproving or contradicting the facts in the plaintiff's statement.*

AFTER publication had passed in a suit instituted against the representatives of certain executors for the recovery of the testator's unadministered assets, amounting to a small sum, a decree had been made directing a special inquiry.

The Master ordered the plaintiff to bring in a state of facts, the depositions on which were subsequently published by order. The plaintiff had previously called upon the defendants to carry in a counter-statement, which they declined to do, and the Master under the circumstances of the case, and because such counter-statement would occasion unnecessary expense if the plaintiff should fail in his evidence, refused to make any order in respect thereof. The plaintiff's state of facts having been established by witnesses contrary to the expectation of the defendants, the latter, under the impression that they had a good defence, afterwards carried in a state of facts, and obtained from Vice-Chancellor *Knight Bruce*, on the 27th of March last, an order that they might be at liberty to examine witnesses, for the purpose of proving the facts alleged in their state of facts, but not for the purpose of disproving or

contradicting any facts alleged in the plaintiff's state of facts, and that they might be at liberty to sue out a commission for that purpose.

Mr. *Cooper*, on behalf of the plaintiff, moved, that this order might be discharged, and that defendants might be ordered to pay the costs of the motion before his Honour; and he submitted that it was not usual to allow parties to go into evidence after publication had passed, except upon the grounds of surprise or special circumstances, neither of which occurred in the present instance to authorize the above order. The evidence now sought to be obtained might be destructive of the plaintiff's case.

The Lord Chancellor. That might be, and yet the plaintiff's witnesses might not be contradicted—for instance, the plaintiff might prove that a debt had been contracted with him by the defendant, but it would be very hard not to allow the latter to prove a release from it.

Mr. *Cooper* referred to Lord Talbot's order, in *Smith v. Turner*, 3 P. Wms. p. 413, and cited *Willan v. Willan*, 19 Ves. 589; *Greenwood v. Parsons*, 2 Sim. 229; *Winpenny v. Courtney*, 5 Sim. 554.

Mr. *Daniel* followed on the same side, and quoted the case of *Lord Nelson v. Lord Bridport*, 6 Beav. 295, as strongly illustrative of the principle upon which the court acts, in respect of such admissions as that now sought.

Mr. *Lowndes* and Mr. *Wright*, contra, argued that there was no unbending rule which prevented the making of the order now appealed against. *Willan v. Willan*, supra, showed that it is a matter for the discretion of the judge. [Lord Chancellor. But it is a discretion regulated by the practice of the court.] Under the circumstances the Master had acted judiciously in not allowing the defendants to put in a counter-statement until it was ascertained that the plaintiff could prove his state of facts, and the order expressly provided that they should not attempt to disprove or contradict the facts which he had alleged.

Mr. *Cooper* replied.

The Lord Chancellor. If it were not for the special circumstances of the case, I should not have had the slightest hesitation in deciding that this order was contrary to the practice, and what ought to be the practice, of this court; and although this order is very carefully guarded to prevent any advantage being taken of the published evidence, yet this would not induce me to sanction an order which is contrary to the practice, and which I consider the wholesome practice, of the court. Under the circumstances, I think it would be extremely hard not to allow the defendants to go into evidence in support of their state of facts under the restrictions mentioned. I think that the order of the Vice-Chancellor is right, and consequently this motion must be dismissed with costs.



**Rolls Court.**

*Howard v. Prince.* May 1, 1847.

**STAMP.—PROBATE DUTY.—ACCOUNT.**

*The executor cannot sue in equity for a sum alleged to be due to his testator's estate, although dependent upon the result of an account, without obtaining a proper stamp.*

*Whether the stamp must cover the amount specifically claimed, is left to the decision of the commissioners.*

THIS was a suit by the executor of Lady Bolton, who claimed a large sum as due to her estate. The frame of the answer made it necessary that the probate of her will should be produced at the hearing, but the probate was insufficient to cover the sum claimed. The claim involved the taking accounts.

Mr. Kindersley and Mr. Goldsmid now asked that the will should be admitted in evidence without requiring any additional stamp, until it should be ascertained by the result of the account before the Master, whether any and what sum was due. It was true, that in the case of a suit at law the courts required a probate sufficient to cover the amount claimed, which, however, the stamp office were in the habit of affixing in such cases, upon security being given for the payment of the duty, in the event of a successful issue to the cause. But they contended, that a claim in equity depending upon the result of an account stood in a different position, inasmuch as until the account was taken the amount to be claimed could not be ascertained, and great inconvenience might result from requiring a stamp to the full amount.

Mr. Turner and Mr. Lloyd were on the other side; but

Lord Langdale, without calling upon them, said, that although he fully concurred in the observations which had been made as to the inconvenience which might be produced in the case of claims dependant upon the result of an account from requiring a stamp in respect of the amount claimed by an executor, and should be glad if his decision should be reversed, yet he thought the practice at law must be followed, and the proper stamp must be obtained.

Mr. Kindersley inquired whether the stamp must be for the full amount claimed; but his lordship said, he must leave that question to the commissioners.

*Walls v. Symes.* May 7, 1847.

**AMENDMENT OF BILL.—CLERICAL ERROR.**

*A bill cannot be amended by altering the name of a plaintiff under an order which does not specify the alteration to be made.*

IN this case Mr. Shapter applied to the court to direct, that under a common order to amend, the bill might be amended by altering the christian name of the plaintiff, in which a clerical error had been made.

Lord Langdale refused the application, observing, that if it was intended to make such an

alteration under an order to amend, the order ought to state the circumstance.

Mr. Shapter then asked that the order which he had obtained might be discharged, and a new order made in the form suggested by his lordship; but

Lord Langdale said, he could not make a binding order to that effect in the absence of the other parties, except upon notice; though he ultimately made the order subject to the risk of any application being made to set it aside.

**Vice-Chancellor of England.**

*Pascall v. Scott.* April 22, 1847.

**COMPETENCY OF WITNESS.**

*Where a person during the time he held the office of guardian of a parish, had joined in prosecuting a suit against another guardian, and in appropriating the parish money towards the expenses of the suit, and had afterwards ceased to be a guardian: Held, that under the circumstances he had not such an interest in the suit as to prevent him from being examined as a witness before the Master, on behalf of the plaintiffs.*

THIS was a motion by the plaintiffs in the suit, to obtain from the court a direction, that the Master in the prosecution of certain inquiries, ordered by a decree in the suit to be taken before him, should examine Edward Scargill as a witness, for the purpose of establishing their claims, his evidence having been refused on the ground of interest. A suit had been instituted by Pascall and Adams, two of the guardians of the poor of the parish of Clerkenwell, against Scott, another guardian, for alleged misappropriation of the parish monies. Scargill was a parish guardian from the year 1833 to 1841, but had then ceased to be one, and during the time he held such office had concurred with the others in appropriating the monies of the parish towards the expenses of the suit, and had been on the committee appointed for taking proceedings against the defendant Scott; as such member of the committee he had directed such proceedings, and had agreed that Mr. Pascall and Mr. Adams should be the plaintiffs in the suit. Mr. Selby was at this time the solicitor employed by the committee, and a sum of 300*l.* was on the 30th March, 1841, paid to him by order of the committee out of the parish monies, to defray the expenses of the suit. Both Master Lynch and Master Senior, to whom the matter had been referred, concurred in refusing to receive the evidence of Scargill, on the ground that he, with the other guardians, had improperly appropriated the parish monies, that such appropriation was contrary to the act of parliament authorizing the raising the rates, that he with them was on that account liable to have an information filed against them by the Attorney-General, at the instance of any of the rate-payers; that he also had an interest in the recovery of the costs of the suit from Scott's



estate, and consequently had such an interest in the cause as to render him incompetent to be examined as a witness.

Mr. Teed and Mr. Rogers appeared in support of the motion, and contended, that Scargill was merely a nominal party, suing in behalf of the parish, and that, therefore, under the stat 3 & 4 Vict. c. 26, ought to have been admitted as a witness; they cited *Meredith v. Gilpin*, 6 Price, 146; stat. 54 Geo. 3, c. 107, s. 9; *Fletcher v. Greenwell*, 1 Crom. Mees. & Ros. 754; *M'Gahey v. Alston*, 2 Mees. & Wels. 206; *Ralston v. Rowatt*, 1 Cl. & Fin. 424; *Attorney-General v. Pearson*, 2 Col. 581; *Needham v. Law*, 12 Mees. & Wels. 560.

Mr. Stuart and Mr. Daniell, contra, urged, that Scargill was virtually a plaintiff on the record, and in that character directly interested in the suit; at all events, it was quite sufficient for them to show that he had such an interest as to make him liable for costs, and it appeared on his examination, that he had authorized payments out of the parish funds for costs of the suit; in respect of these he might at any time be called upon to refund, upon an information filed by the Attorney-General, at the instance of any of the rate-payers; he was therefore interested in the suit, and as such, incapable of being examined. They cited *Bell v. Smith*, 5 Barn. & Cres. 188; *Edwards v. Goodwin*, 10 Sim. 123; *Attorney-General v. Compton*, 1 Y. & Col. 417.

The Vice-Chancellor said, it appears to me that Mr. Scargill, independently of the fact of his being a rate-payer, is in no way liable to the costs of this suit. Mr. Selby, who was the solicitor first employed in this suit, has been paid his costs; he has ceased to be such solicitor, and the person now carrying it on is doing so under the authority of those who employ him, and to those he looks for the payment of his costs. I cannot comprehend the proposition, that Scargill not being now a party to the record can by any means be made liable to the costs of the suit. If the guardians recover the fund it will be disposed of by them as guardians, and will either form a bonus to the rate-payers or go to pay off the losses incurred. I do not think that in any way can Scargill be considered as a person having any interest except as a rate-payer, and in that character the statute has provided, that he should be a competent witness.

#### Queen's Bench.

(Before the Four Judges.)

*The Queen v. Vickery.* Hilary Term, 1847.

#### PRACTICE.—AFFIDAVIT.

*The affidavits in support of an application for an attachment for disobedience to a crown office subpoena to appear and give evidence before justices touching a pauper settlement, must show that a proper complaint was made to the justices.*

A rule nisi had been obtained, calling upon

R. Vickery to show cause why a writ of attachment should not issue against him for his contempt in not obeying a writ of subpoena, issued out of this court, commanding the said R. V. personally to appear before the justices at petty sessions, there to testify the truth, upon an application to be then and there made by the parish officers of Stawley, in the county of Somerset, for an order for the removal of certain paupers chargeable to the said parish of S., to the place of their last legal settlement, and to bring with him certain books, in order that they might be produced in evidence before the said justices. The affidavits on which the motion was made, stated that the paupers were residing in and chargeable to the parish of S., that inquiries had been made by the parish officers, and that it was ascertained that the paupers were lawfully settled in another parish; that the subpoena was served on the defendant in August last, and that on the 3rd September, application was made by the parish officers of S. to the justices at petty sessions for an order for the removal of the said paupers; that the said R. V. attended in obedience to the said writ, and was duly sworn, but refused to answer certain questions which were asked of him, and that in consequence of such refusal to answer the said questions, no order of removal could be obtained, and that the paupers still remain chargeable to the parish of S.

Mr. Serjeant Kinglake, on showing cause against the rule, took a preliminary objection, that it did not appear on the affidavits that a complaint was made to the justices by the parish officers of Stawley that the paupers were chargeable. *Regina v. The Justices of Buckinghamshire.*<sup>a</sup> (Stopped.)

*Pashley*, contra. The affidavits allege, that an application was made to the justices on behalf of the overseers of Stawley, which if made by their attorney or by one of their own body acting for and in the name of the rest, would be sufficient. *Regina v. Bedingham.*<sup>b</sup> No objection of this sort was taken before the justices.

Lord Denman, C. J. It cannot be supposed that we are to issue an attachment for not giving evidence before a judicial tribunal, unless that tribunal is first shown to have had jurisdiction. We cannot presume from these affidavits that a proper complaint was made before the justices.

*Patteson, Coleridge, and Wightman, J.'s*, concurred.

Rule discharged without costs.

#### Queen's Bench Practice Court.

(Before Mr. Justice Wightman.)

*Smith v. Sparrow,* Hilary Term, 1847.

AWARD.—EXAMINATION OF PLAINTIFF AS A WITNESS.—IRREGULARITY.

*A cause having been referred to arbitration, it was expressly stipulated on the part of the*

<sup>a</sup> 3 Q. B. R. 800.

<sup>b</sup> 1 New Sess. Cases, 106.

defendant that the plaintiff should not be examined as a witness at the reference in support of his claim, and the usual clause in the order of reference giving the arbitrator power to examine the parties to the suit was struck out by consent. At the reference the arbitrator allowed the plaintiff to be called, and heard his evidence, against the consent and express protest of the defendant. A motion being made on the part of the defendant to set aside the award, Held, that the arbitrator had exceeded his authority, and that the award was bad. Held, also, that the fact of the defendant's counsel having after protest cross-examined the plaintiff and gone into the defendant's case, did not preclude him from moving to set aside the award. Semble, That if the defendant had been examined as a witness in support of his case, it would have disqualified him from taking any objection to the admission of the plaintiff as a witness.

In this case the plaintiff had brought his action against the defendant as the executor of Edward Meadows, deceased, to recover a balance of account alleged to have been due to the plaintiff from Meadows at the time of his death. Before the cause was at issue it was referred to the arbitration of a lay arbitrator, it being expressly stipulated on the part of the defendant, that the arbitrator should not have power to examine the plaintiff in support of his claim, and the usual clause in the order of reference giving the arbitrator power to examine the parties to the suit was struck out. At the first meeting before the arbitrator, the plaintiff's attorney who conducted his case tendered the plaintiff as a witness in support of his claim. This was objected to by counsel who appeared for the defendant, on the ground that the arbitrator had no power to examine the parties to the suit under the order of reference, and therefore the plaintiff could not be examined; he also called the attention of the arbitrator to the agreement which had been entered into between the attorneys at the time the case was referred. The plaintiff's attorney however told the arbitrator that he had still a discretionary power incidental to his character of arbitrator which enabled him to examine the parties, if he thought fit to do so. The arbitrator, upon this, allowed the plaintiff to give his evidence. The defendant's counsel protested against the course taken by the arbitrator, and then proceeded to cross-examine the plaintiff, and went into the defendant's case. Subsequently the arbitrator made his award in favour of the plaintiff. Some time since *Watson* obtained a rule nisi to set aside this award on several grounds, but the only one on which any decision was given was, that there had been a breach of faith and misconduct on the part of the plaintiff and his attorney in tendering and causing the plaintiff to be examined as a witness in the said reference.

*Worledge* now showed cause, and contended, first, that even if the arbitrator was wrong in admitting the evidence, still that was not a sufficient ground for setting aside the award. The

admission of a witness to give evidence being a matter of law on which the decision of the arbitrator is final; citing *Symes v. Goodfellow*, 2 Bing N. C., 532; *Jupp v. Grayson*, 1 C. M. & R., 523. He also contended that even if there was any irregularity, it was waived by the course taken by the defendant's counsel in cross-examining the plaintiff and going into the defendant's case, and thus taking the chance of an award being made in his favour. On this point he cited *Allen v. Francis*, 9 Jur. 691; *The Queen v. Clark and another*, 6 Q. B. 349.

*Watson* and *Naylor* were heard in support of the rule, contending that the arbitrator had clearly exceeded his authority in examining the plaintiff when had no power to do so, and the defendant's counsel having taken the objection, had done all that was necessary, and was not bound to withdraw from the reference.

*Cur. ad. vult.*

*Wightman, J.*, (25th Jan.,) gave judgment. This was an application to set aside an award upon several points, but ultimately the second and fourth raised the only questions which appeared to me to require consideration. The first of these was, whether the arbitrator ought to have received the evidence of the plaintiff in support of his own case, and whether the award ought to be set aside on that ground. I have been unable to find any case in which there has been an express decision as to the power of an arbitrator to allow a party to the suit to give evidence as a witness in support of his own case, though objected to by the other side, and though there was no express power given by the submission to examine the parties. In *Warne v. Bryant*, 3 B. & C. 590, where an order of reference did give power to the arbitrator to examine the parties if he thought fit, the court held that he might, under an order so framed, examine a party to the suit, even in support of his own case; leaving it, however, doubtful whether without express authority the arbitrator would be at liberty to examine a party in support of his own case. Upon principle such a course would seem objectionable, and an excess of the authority of the arbitrator, especially in cases like the present where the defendant is an executor and not likely to be personally cognizant of the transaction. But I do not find myself called upon to decide this question; for under the special circumstances of the case, I think it clear that the plaintiff ought not to have tendered his own evidence, nor ought the arbitrator to have received it. Before the order of reference was made the defendant expressly refused to allow the plaintiff to be examined, and the usual clause authorising the arbitrator to examine the parties was for that reason by mutual consent struck out. It is clear to me from the affidavits that the defendant would not have referred the case if the plaintiff was to be examined; and after the clause giving authority had been by consent struck out, he might reasonably conclude that he would not be examined; and the examining the plaintiff as a witness for himself afterwards is so much in fraud of the defendant, that the

award made in the plaintiff's favour upon his own evidence ought not to be allowed to stand, unless the defendant has by his conduct upon the arbitration waived the objection and disabled himself from taking it, which is the remaining point for consideration. The defendant, after the objection to the reception of the evidence of the plaintiff himself, nevertheless proceeded to cross-examine him as to a set-off which the defendant sought to establish, and without retiring from the reference called other witnesses in support of his case. All this was done under protest, but it was contended that proceeding at all after the admission of the evidence objected to was a waiver of the objection. In the absence of any authority showing that such an objection, which is not to an irregularity merely, is waived by continuing to attend the reference, I certainly do not feel disposed to think it so. The continuing to attend was under protest, and nothing was done by the defendant from which an acquiescence in the previous proceedings could be inferred. Irregularity in the conduct of the arbitrator, as by omitting to give proper notices or the like, may undoubtedly be waived by continuing to attend after notice of the irregularity, as appearing at *nisi prius* after an irregular notice of trial, may be a waiver of the irregularity. But a party who takes an unsuccessful objection to the admission of evidence at *nisi prius* does not waive his right to a new trial because he cross-examined the witness objected to, or subsequently called witnesses of his own. In the case which was cited that occurred before me in which an arbitrator examined the witnesses for the plaintiff without oath, I was of opinion that the defendant could not object to the award, because he had not only gone on with the reference, but had examined his own witnesses without oath, which appeared to me to be not only a waiver of the objection, but an acquiescence in the course pursued; and if the defendant in the present case had tendered himself for examination, I think he would have disqualified himself from taking any objection to the examination of the plaintiff. Upon the whole then it appears to me that the examination of the plaintiff, under the circumstances stated in the affidavits, was a sufficient objection upon which the award might be set aside, and that such objection was not waived by the defendant going on with the arbitration. The rule, therefore, must be made absolute.

Rule absolute.

### Common Pleas.

*Wontner v. Shairp.* Easter Term, 1847.

ALLOTTEE OF RAILWAY SHARES.—INVALID CONTRACT.—FRAUDULENT MISREPRESENTATION.—RECOVERY OF DEPOSITS.

*The prospectus of a railway company stated the capital to be 3,000,000l., in 120,000 shares. On the plaintiff's application by letter, sixty shares were allotted to him, and the letter of allotment was headed in the same manner as the prospectus, and*

*stated further what was not to be found in the letter of application, namely, that the allotment was upon condition that the deposit be paid on or before a given day on pain of forfeiture, and the shares being disposed of to others. Eleven days before the given day the managing committee advertised that they had completed the allotment of shares, and there was some evidence of the plaintiff's having seen the advertisement. On the third day after the given one he paid his deposits, and in a fortnight afterwards executed the usual parliamentary contract and subscribers' agreement. In the following month a meeting was holden, the plaintiff being present, and it was then made known that at the date of the advertisement the committee had in fact only allotted 58,000 shares, although there were applicants for more than the 120,000 shares. At that meeting the plaintiff opposed the resolutions to continue the concern, and moved as an amendment that the deposits should be returned; but the chairman declined to put the amendment to the meeting. Subsequently the scheme was abandoned, and the plaintiff brought his action against a member of the managing committee to recover back the amount of his deposits.*

Held, First, that the application for shares and the letter of allotment constituted no binding contract. Secondly, that the advertisement amounted to a fraudulent misrepresentation, and having been so found by the jury, as also that it was a material inducement to the plaintiff to sign the subscribers' deed, as well as to pay his money, formed a good ground of action to which the terms of the deed were no answer. Thirdly, that the plaintiff's conduct at the subsequent meeting did not amount to any waiver of his right to recover. And fourthly, that the omission to direct the jury as to whether or not there was a binding contract was no ground for a new trial.

THE material facts and circumstances of this case are so fully stated in the judgment below as to render it quite unnecessary to repeat them here.

The case was argued early in the term by Mr. Knowles and Mr. J. Browne, on behalf of the plaintiff, and by Sir F. Kelly, Mr. Sergeant Channell, and Mr. Fitzherbert on behalf of the defendant.

*Cur. adv. vult.*

May 8th, 1847. The judgment of the court was now delivered by

Wilde, C. J. This is an action of assumpsit for money had and received by the defendant to the use of the plaintiff, and the plea of the defendant is *non assumpsit*. The defendant is sued as one of the committee of management of the Direct London and Exeter Railway Company, with an extension to Falmouth and Penzance, for the sum of 82l. 10s., being the deposit paid by the plaintiff on 60 shares allotted to him in that concern. The case was tried be-

fore Mr. Justice *Erle*, at the sittings after last Trinity Term, and it then appeared in evidence that in 1845 a prospectus had been issued which stated the capital of the proposed company to be 3,000,000*l.*, in 120,000 shares of 25*l.* each, deposit 1*l.* 7*s.* 6*d.* per share. It then sets forth a form of application for shares, which being headed in the same manner as the prospectus itself, and directed to the provisional committee, is in the following terms :—" I request you will allot me ——— shares of 25*l.* in the capital of the above-named railway, and I will accept the same, or any less number, subject to the regulations of the company, and pay the deposit of 1*l.* 7*s.* 6*d.* per share, and sign the parliamentary contract and subscribers' agreement when required." On the 25th of September, 1845, the plaintiff sent an application for 30 shares, substantially in the form so prescribed, and afterwards, on the 10th of October, he made a similar application for an increase in the number to 60. In answer to these applications the plaintiff received a letter bearing at the top the words "Not transferable," followed by a heading similar to that of the prospectus, and which then states that "the committee have, at your request, allotted to you sixty shares of 25*l.* each in this undertaking, upon condition that the deposit of 1*l.* 7*s.* 6*d.* per share therein be paid on or before the 28th of October instant, in default of which this allotment will be forfeited and the shares disposed of to other applicants," &c. In that letter, as well as in the prospectus the capital of the concern is stated at 3,000,000*l.*, in 120,000 shares of 25*l.* each; and such being the case, the managing committee, on the 17th of October, published in the *Times* newspaper an advertisement which stated, "The managing committee hereby give notice that they have completed the allotment of shares, and that the usual letters are this day issued," and then proceeded to offer as an apology to those whose applications had been cut down or passed over the preference the committee had been obliged to give to those locally interested or likely to bring to bear on the company a large share of legitimate influence in the arduous duty of deciding on claims unprecedented in their number. The advertisement further sets forth, that the engineering preparations were so far advanced that the project could not fail to be placed before parliament in a manner the most satisfactory to the shareholders. Some evidence was then given at the trial from which it was to be inferred that the plaintiff had seen this advertisement, and on the 21st of October the plaintiff appears to have paid the amount of his deposit on the sixty shares which had been allotted to him. At this time it was clearly proved that in point of fact no more than 58,000 shares had been allotted by the committee, although responsible persons had applied for more than the whole of the proposed capital. On the 4th of November, the plaintiff and others executed the parliamentary contract and subscribers' deed, soon after which it was found that the plans and sections of the pro-

posed lines were imperfect, and that the whole amount of the deposits paid up had been expended except 450*l.* This led to a meeting of the shareholders on the 15th of December, at which the plaintiff attended, and a report of the directors was read, setting forth the then state and prospects of the concern. Resolutions of confidence giving authority to take fresh steps in carrying out the line were also proposed, to which, as an amendment, the plaintiff moved that the whole of the deposits should be returned, and that the committee should pay all expenses incurred. This amendment the chairman did not put to the meeting, but only the original resolutions, which were carried by a large majority. Upon these facts it was contended at the trial, that as the advertisement containing the misrepresentation as to the allotment had been issued with the knowledge of the committee, and as the plaintiff had been thereby induced to pay his money, he was entitled to recover it back from the defendant, and that as the subscribers' deed had been executed under the same misrepresentation, his right was not thereby affected. For the defendant it was argued that the written application for shares and the subsequent letter of allotment constituted a valid contract, under which the plaintiff was bound to pay his deposit, and that therefore the payment made by him could not be referred to the advertisement, and further that the deed which he had signed expressly authorised the application of the deposits to the expenses incurred in preparing for parliament. The learned judge who tried the cause left it to the jury to say whether the defendant had made a false representation which was a material inducement to the plaintiff to pay his money; whether, also, the consideration for the payment by the plaintiff had failed, the company being at an end; and further, whether the false representation acted upon the plaintiff's mind when he signed the deed. The jury answered the questions in the affirmative, and thereupon the learned judge said that the finding entitled the plaintiff to the verdict, and it was accordingly so entered. To set aside this verdict and enter a nonsuit, or for a new trial, a rule *nisi* has been obtained on the ground of misdirection, and the verdict being against the evidence, and the case has been recently fully argued on showing cause against that rule. The argument on behalf of the defendant is, as at the trial, that the payment was made under a binding contract, and not in consequence of the advertisement; that the advertisement does not import that all the shares had been allotted, but if it does, the statement is addressed to disappointed applicants, and not to the allottees; and if the money had not been obtained by fraud, the deed executed by the plaintiff expressly authorised the application of the deposits to the payment of the expenses. But it was admitted that if the payment had been obtained by fraud, the execution of the deed would be no answer to the action. Further it was said, that by attending the meeting of the 15th of December, and there voting

as a shareholder, the plaintiff had precluded himself from claiming back his deposits; and in support of this latter ground the case of *Campbell v. Fleming*, 1 Ad. & El. 40, was cited as an authority. On the first point this court is of opinion that there was no binding contract on the plaintiff to part with his money when he paid his deposit: he had applied for shares in a concern which was to have a capital of 3,000,000*l.*, in 120,000 shares, but the committee of management had allotted to him shares of a very different description, whilst they professed to allot the very thing he asked for; for the letter of allotment, as well as the prospectus, described the capital to be 3,000,000*l.*, in 120,000 shares, and it might be reasonable to expect success with that capital, but absurd to suppose that it could be accomplished for less than half that amount. The plaintiff having asked for shares in a practicable scheme, received shares in one rendered impracticable by the act of the committee in not allotting more than 58,000 shares, when more than the whole capital had been applied for by responsible persons. On the ground also that the letter of allotment was conditional, we think there is no binding contract. It contained new terms not found in the plaintiff's application for shares, and is not therefore a simple acceptance of the plaintiff's proposal. Such being our opinion, it becomes necessary to inquire whether there is any evidence of the plaintiff having paid the deposits in consequence of a fraudulent misrepresentation, and we think there is ample evidence of such misrepresentation. We think the advertisement clearly means that all the shares had been actually allotted, and that it must be taken to have been addressed to all the members of the concern. To the plaintiff it represents that he had got all that he had asked for,—sixty shares of the 120,000, and the jury, therefore, were well warranted in finding that the advertisement was a material inducement to the plaintiff to pay his money, having considered the meaning to be the same as we have done. The next point is, that by attending the meeting of the 15th December, and acting as a shareholder when he knew that only 58,000 shares had been allotted, the plaintiff had precluded himself from making any claim to the deposits on that ground, but of that point the evidence entirely disposes. The only thing done by the plaintiff was to propose that all the deposits should be returned; and the argument comes to this, that having tried to induce others to join him in claiming back the deposits and failed, the plaintiff should not be permitted to do so himself. No such doctrine can be found in *Campbell v. Fleming*, or in any other decided case that we know of. The plaintiff did nothing at the meeting to show his assent to be bound by what passed as a holder of sixty shares, and therefore we think he is in a condition to maintain the present action. It was further contended, that the defendant was entitled to a new trial, because the judge did not tell the jury whether or not the letter of allotment and application constituted a

binding contract. We think that is no ground for a new trial. It was a question, not of fact for the jury, but of law for the court, and if a new trial were granted the same questions must again be submitted to the jury. It appears, however, that after the finding of the jury the learned judge said the plaintiff was entitled to the verdict, which must be taken as a direction to the jury to find such verdict. If in order to give that direction it was necessary to decide that the letters constituted no binding contract, the learned judge must be taken to have so decided; and if he had considered that they did constitute such contract, the direction must have been considered wrong and a new trial granted. But inasmuch as the court is of a contrary opinion, the rule obtained by the defendant fails as to this point also, and must therefore on the whole be discharged. My brother *Williams*, having been consulted when at the bar in this case, has taken no part in the judgment.

Rule discharged.

### Exchequer.

*Roche v. Champein*. Trinity Term, 24th May, 1847.

#### PLEADING.—DEBT.—SET-OFF.

*A declaration in debt contained three counts, in each of which 6*l.* 10*s.* was claimed. The defendant pleaded a set-off covering the aggregate of the sums in the declaration. The particulars of demand stated the action to be brought to recover 6*l.* 10*s.* for money lent. At the trial the defendant proved a set-off above 6*l.* 10*s.* Held, that the plea admitted 6*l.* 10*s.* to be due on each count, and that the plaintiff was entitled to a verdict.*

**DEBT.** The declaration stated the defendant to be indebted to the plaintiff in 6*l.* 10*s.* for money lent, and in 6*l.* 10*s.* for money had and received, and in 6*l.* 10*s.* for money due on an account stated. The declaration in the commencement demanded the aggregate of these sums—19*l.* 10*s.*

The defendant pleaded a set-off covering the whole demand.

The particulars stated the action to be brought to recover the sum of 6*l.* 10*s.* for money lent.

At the trial before the under-sheriff of Middlesex the defendant proved a debt due to him from the plaintiff above 6*l.* 10*s.*, upon which a verdict was found for the defendant.

A rule *nisi* was obtained to set aside the verdict and for a new trial, on the ground of misdirection, inasmuch as upon these pleadings the plaintiff was entitled to a verdict for 6*l.* 10*s.*

*Miller* showed cause. In an action of debt the plaintiff was formerly obliged to prove the whole of his demand, or he could not obtain a verdict. But in modern times the action of debt stands on the same footing as the action of assumpsit, and the plaintiff may recover for whatever amount he proves, though less than

the sum demanded in the declaration. *Cousins v. Paddon*, 4 M. & W. The plea of set-off, therefore, only admits the amount which the plaintiff is bound to prove in order to entitle him to recover. A writ of inquiry may be executed in an action of debt. *Arden v. Connell*, 5 B. & Ald. 885.

*Bovill*, in support of the rule, cited *Rodgers v. Maw*, 4 Dow. & L. 66.

*Per Curiam*. The defendant should have pleaded the set-off as to 6*l.* 10*s.*, and never indebted as to the residue. If there had been no plea at all, the plaintiff would have been entitled to sign final judgment for the amount demanded in the declaration, namely, the aggregate of the sums in the three counts (19*l.* 10*s.*) but he could only have issued execution for the amount actually due (6*l.* 10*s.*) The plea admits 19*l.* 10*s.* to be due, and alleges a set-off at least equal to that sum. But the defendant only proves a set-off to the amount of 6*l.* 10*s.* With respect to issuing a writ of inquiry in debt, it is found in practice to be much more beneficial to suitors that there should be no writ of inquiry. They know that if they levy execution for more than the amount really due, the court will set it aside.

Rule absolute.

*Billing v. Coppock*. Trinity Term, 25th May, 1847.

ATTORNEY.—BILL.—TAXATION.

*In the year 1840, an attorney in London employed an attorney at Cambridge to prosecute a person for bribery. There was no agreement as to agency charges. In the year 1841, a bill was delivered, and another in the year 1842, both unsigned. In the year 1847, a signed bill was delivered, and a month afterwards an action was commenced. A judge at chambers having made an order to tax the bill: Held, on motion to rescind the order, that the bill was taxable, (overruling *In re Simons*, 3 D. & L. 156); and that the delivery of the signed bill was a "special circumstance" which authorised the taxation, although the defendant might have taxed the unsigned bills.*

*Martin* moved to rescind an order of *Alderson*, B., referring an attorney's bill for taxation. It appeared that in the year 1840, the defendant, who is an attorney in London, employed the plaintiff, an attorney at Cambridge, to prosecute a person for bribery at the Cambridge election. There was no agreement as to agency charges, but the plaintiff was to have the entire profit. Two bills of costs were delivered, one in the year 1841, and the other in the year 1842, but neither were signed. In the beginning of the present year the plaintiff delivered a signed bill for the same business, and a month afterwards commenced the present action. The defendant thereupon obtained the order to tax. It was submitted—first, that the 6 & 7 Vict. c. 73, s. 37, did not apply to the case of one attorney employed by another. *In*

*re Gedge*, 2 Dow. & L. 915; *In re Simons*, 3 Dow. & L. 156. [*Alderson*, B. It is much more reasonable that a jury should find a verdict according to the Master's taxation, which would be a guide for them. *Pollock*, C. B. It appears from the case of *Weymouth v. Knipe*, 5 Dow. P. C. 495, that an agent's bill was expressly excepted out of the 2 Geo. 2, c. 28, by the 12 Geo. 2, c. 13, s. 3. The 6 & 7 Vict. c. 73, contains no such exception.] Secondly, there were not special circumstances to take the case out of the proviso in the 37th section, "that no such reference as aforesaid shall be directed upon an application made by the party chargeable with such bill after the expiration of twelve months after such bill shall have been delivered, except under special circumstances, to be proved to the satisfaction of the court or judge to whom the application for such reference shall be made." In this case the defendant might have obtained an order for the taxation of the two first bills, although they were not signed. *In re Pender*, 2 Phillips, 69.

*Pollock*, C. B. My brother *Alderson's* order is to tax the signed bill, and that has been delivered within twelve months.

*Alderson*, B. The delivery of a signed bill within twelve months is a special circumstance upon which the party may act. The ordinary reading of the statute implies that the party may tax within twelve months after the delivery of a signed bill. The Lord Chancellor has decided that the statute has a more extensive operation, and that an unsigned bill may be taxed.

*Rolfe*, B. If it were not so, an attorney might deliver an unsigned bill, and then lie by for a twelvemonth, and afterwards deliver a signed bill, and so prevent the taxation altogether.

Rule refused.

## TRANSFER OF CHANCERY CAUSES.

From the Vice-Chancellor of England to the Vice-Chancellor Sir J. Wigram, by order of the Lord Chancellor.

*Dickenson v. Callbeck.*  
*Fagge v. Fagge,*  
*{ Morrison v. Hoppe }*  
*{ Ditto v. King }*  
*Rimell v. Wheatley.*  
*Parry v. Howell.*  
*Attorney-Gen. v. Croft.*  
*Bateman v. Wilks.*  
*Kincair v. Nunn.*  
*Beech v. Ford.*  
*Brierley v. Andrew.*  
*Lewis v. Damax.*  
*Hunt v. Peacock.*  
*Darnell v. Swift.*  
*Ward v. Price.*  
*Halford v. Stone.*  
*Sheffield v. Von Donop.*

9th June, 1847.

## COMMON LAW SITTINGS.

**Exchequer of Pleas.**

After Trinity Term, 1847.

## IN MIDDLESEX.

Monday	June 14	Common Juries.
Tuesday	15	} Custom and Common Juries.
Wednesday	16	
Thursday	17	} Excise and Common Juries.
Friday	18	
Saturday	19	} Common Juries.
Monday	21	
Tuesday	22	} Special and Com. Juries.
Wednesday	23	
Thursday	24	
Friday	25	
Saturday	26	
Monday	28	

## IN LONDON.

Tuesday	June 15	To Adjourn only.
Wednesday	29	} Adjournment Day, Common Juries.
Wednesday	30	
Thursday	July 1	} Common Juries.
Friday	2	
Saturday	3	} Special and Com. Juries.
Monday	5	
Tuesday	6	
Wednesday	7	
Thursday	8	
Friday	9	
Saturday	10	

The Court will Sit at 10 o'clock.

## BUSINESS OF THE COURTS.

**Exchequer.**

THIS Court will hold Sittings on Friday the 18th of June instant, and on every following day thenceforth, (Sundays and Wednesday the 23rd day of June instant excepted,) until and including Thursday the 8th day of July next; and at such sittings will proceed in disposing of the business then pending on the paper of *Demurrers*; and in the paper of *New Trials*, together with all motions appointed to be brought on with any cause standing in the New Trial Paper; and also in giving *Judgment* upon the Special Cases, Rules, and Motions then standing for judgment.

## PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

**House of Lords.**

## NEW BILLS IN PROGRESS.

Consolidation and Amendment of the Law of Bankruptcy. For 2nd reading. The Lord Chancellor.

Debtor and Creditor. For 2nd reading. The Lord Chancellor.

Repeal of Insolvency Jurisdiction of Courts of Bankruptcy, Abolishing Court of Review, and Reducing Number of Commissioners. (No. 2.) In Select Committee. Lord Brougham.

Threatening Letters. For 2nd reading. Lord Denman.

Clergy Offences. In Committee.

**House of Commons.**

## NEW BILLS IN PROGRESS.

City Small Debts Court. In Committee. Mr. Masterman.

Law of Railways. Mr. Strutt.

For the Speedy Trial and Punishment of Juvenile Offenders. In Committee. Sir John Pakington.

Lunatic Asylums Regulation. Att.-General.

Inclosure Act Amendment. Sir F. Thesiger.

Health of Towns. Lord Morpeth.

Towns Improvement Clauses.

Taxation of Costs on Private Bills. To be reported. Mr. Hume.

Registration of Voters. For 2nd reading. Mr. Walpole.

Highways. In Select Com. Sir Geo. Grey.

Administration of the Poor Laws. Sir Geo. Grey.

Copyhold Commission Continuance.

Turnpike Acts Continuance.

Loan Societies Continuance.

Ecclesiastical Courts. Mr. Bouverie.

## THE EDITOR'S LETTER BOX.

"A Juvenile Subscriber" will find the distinctions he has referred to, between the provisions of the Small Tenements' Act, (1 & 2 Vict. c. 74,) and the remedy given by the County Courts' Act against tenants holding over, adverted to at some length, *ante*, p. 18. As we read the latter act, the judges of the new courts have no jurisdiction, under the 122nd section, when the value of the premises exceeds 50*l.* by the year, although the rent may be less than 50*l.* a year, or where the rent exceeds 50*l.* a year. The intention of the legislature, it may be inferred, was not to subject the tenants or occupiers of property beyond the prescribed value to the summary mode of proceeding pointed out by the section referred to. In this, as in other particulars, however, the late act is ambiguous and difficult to understand.

The case of *Hilton v. Lord Granville*, reported p. 134, *ante*, was decided in the Full Court Q. B.



# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

---

SATURDAY, JUNE 19, 1847.

---

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

---

## LEGAL MEASURES NOW BEFORE PARLIAMENT.

---

THE necessity for unrelaxed vigilance in reference to the proceedings in parliament, suggested in a former number, is about to be strikingly exemplified. It is now understood, the mischiefs the country has already endured by precipitate legislation is likely to be aggravated, by forcing through both houses more than one measure affecting the administration of the law, at the eleventh hour, when there is neither time, patience, nor disposition to discuss their merits, or even to master the details. If the proposed enactments related to the glove manufacture, or the ribbon trade, or any other branch of national industry, some person would be found in parliament to insist that the interests immediately involved should be previously consulted, and the passing of the law postponed until the matter was duly considered. But as the measures in question peculiarly affect the administration of justice, experience justifies the apprehension that they will be consigned to the tender mercies of those persevering spirits who seem to act upon the principle, that it is better to do mischief than do nothing.

One of the measures which is now in rapid progress through parliament is founded upon the Report of a Select Committee of the House of Lords on the Bankruptcy Law Amendment Bill, the Bankruptcy and Insolvency Bill, (No. 2,) and the Debtor and Creditor Bill. In reference to these several bills, the committee have reported as follows:—

"The committee are of opinion that the provisions in the several acts respecting bankruptcy and insolvency ought to be consolidated, but before any bill or bills for that purpose can be usefully considered it appears to be necessary to determine whether one system of law should not be adopted for all cases in insolvency.

"An inquiry necessary to lead to a satisfactory result upon this important subject would in the opinion of the committee occupy more time than the probable duration of the present session is likely to afford; the committee therefore have abstained from entering into that inquiry, but earnestly recommend this important subject to the favourable consideration of the house in the next session of parliament, entertaining the hope that such assimilation may, under due guards and modifications, be found practicable.

"The committee, however, are of opinion, that there are some matters connected with the bills referred to them which ought not to be delayed, and which may properly be provided for during the present session.

"It having been found unnecessary to continue the Court of Review in Bankruptcy as originally constituted, the jurisdiction of that court is now exercised by one of the Vice-Chancellors, though not in that character, but as a judge of the Court of Review.

"The committee are of opinion that the Court of Review ought to be abolished, and the jurisdiction now belonging to it ought to be exercised by such of the Vice-Chancellors as the Lord Chancellor may from time to time appoint for that purpose.

"Much inconvenience has been found to arise from the extent of country subject to the jurisdiction of the London Court of Bankruptcy. In the country districts the Lord Chancellor, to prevent similar inconvenience, has the power of appointing different places within each district in which the court is to be held. The committee are of opinion that the Lord Chan-



cellor should have a similar power within the London district, doubts having been suggested whether he has this power.

"The circuits of the commissioners under the Insolvent Debtors Acts are attended with loss of time and great expense in travelling, and yet do not afford adequate means for the executing of the object of those acts. The appointment of judges in the county courts afford a remedy for the evil; and the committee recommend that all the duties now performed by the commissioners upon the circuit should in future be performed by the judges of the county courts.

"It having been found inconvenient in the present state of the law that the insolvent jurisdiction given by the late acts in bankruptcy should be exercised by the commissioners, the committee are of opinion that such jurisdiction should for the present be removed from the commissioners in bankruptcy, and that any vacancy which may occur in the London Court of Bankruptcy or the Court of the Insolvent Debtor Commissioners should not be filled up before the termination of the next session of parliament.

"The committee consider these subjects as of great importance to the due administration of the law, and recommend them to the serious consideration of the house."

A bill has been framed, in conformity with this report, abolishing the Court of Review and the circuits of the Insolvent Commissioners, and transferring the jurisdiction of the Commissioners of Bankruptcy in matters of insolvency in town causes to the Commissioners of the Court for the Relief of Insolvent Debtors, and in country causes to the judges of the County Courts, to whom the jurisdiction now exercised by the Commissioners for the Relief of Insolvent Debtors in country cases is also transferred. We are not aware whether it is intended to consolidate the bill the provisions of which we have just described, with another entitled "An Act to amend the Law relating to Insolvent Debtors," which we find was brought from the Lords on the 29th April, and ordered by the House of Commons to be printed on the 9th June, 1847. The bill last referred to consists of two lengthy clauses, which we deem it advisable nevertheless to print *in extenso*.

"That in case, upon the discharge of any insolvent debtor by the court authorized for that purpose, by virtue of any act now or hereafter to be in force, it shall appear to the said court, upon any application to the said court by the said insolvent made after the expiration of ten years from the date of the discharge of such insolvent by the said court, that any real or personal property, or any reversionary, con-

tingent or other interest in any real or personal property, stated in the schedule of the said insolvent to have belonged to the said insolvent at the time of his discharge, shall not have been sold or disposed of, or made available for the benefit of the creditors of the said insolvent, the said court is hereby authorized upon such application to investigate such matter, and, if it shall appear just and proper, to require the assignee of such insolvent's estate appointed by the said court, or in case no such assignee shall have been appointed, then to authorize the said insolvent to take such measures as to the said court shall appear advisable, to sell and dispose of such real or personal property, or reversionary, contingent or other interest in any real or personal property, so stated in the schedule of the said insolvent, either by public auction or private contract, or in such other manner as the court shall direct; and in case such sale and disposition shall be effectual, and to the satisfaction of the court, the assignee of the said insolvent's estate, or the provisional assignee of the said court (as the case may be), shall, under an order to be made by the said court for that purpose, execute an assignment of such property so sold and disposed of to the purchaser or purchasers thereof, upon payment into the said court of the amount of such purchase or purchases, to abide the order of the said court; but in case it shall appear to the satisfaction of the said court that no sale or disposition of such property can be effected, and that the same cannot be made available for the benefit of the creditors, then and in such case it shall be lawful for the said court, if the said court shall think fit, and after such notice given of such proceedings to the several creditors mentioned in the schedule of the said insolvent, as the said court shall deem necessary and direct, and on proof to the satisfaction of the said court of the due service of such notice, and upon hearing any objections which may be made thereto by any creditor of the said insolvent, to order the provisional assignee of the said court, notwithstanding the appointment by the said court of any assignee or assignees of such insolvent's estate and effects, to execute an assignment of such property to the said insolvent, who shall thereupon be and become fully possessed of and entitled thereto, and as if he had now been discharged by the said court: Provided always, That all costs, charges and expenses of such application to the said court, and of proceeding to a sale and disposition of such property, and all other costs, charges and expenses attending the proceedings thereon before the said court, and of the assignment of such property to the said insolvent, shall be borne and defrayed by the said insolvent, or in case of actual sale of such property, out of the sum realized and paid into court in respect thereof, if the same shall be sufficient for that purpose.

"That in any application to be hereafter made to the said court, under the powers of any act in force for the relief of insolvent debtors, for the appointment of any part of the future ac-

quired property of any insolvent towards the payment of the debts contained in the schedule of such insolvent, it shall not be lawful for the said court, in proceeding upon such application, to take any account or consideration of any real or personal property, or any reversionary, contingent or other interest in any real or personal property, stated in the schedule of the said insolvent to have belonged to the said insolvent at the time of his discharge, and which shall have been reconveyed to such insolvent by the provisional assignee of the said court in manner herein provided, unless it shall appear to the satisfaction of the said court, that such property so reconveyed to the said insolvent since such reconveyance has become of substantial value, or has been sold or disposed of for a valuable consideration; in either of which cases the same shall be deemed and considered by the said court to be in the nature of future acquired property, and may be dealt with accordingly."

In both these bills the hand of the same eminent artist is visible, and what alterations and modifications may be introduced between this and the first week of July, when it is intended they shall receive the Royal assent, their distinguished framer best knows. Our complaint is, that they should be pressed at all through parliament at such a season, the more especially as the Report of the Select Committee of the Lords holds out a prospect that the whole subject is to be ripped up in the next session of parliament. Granting that the Court of Review ought never to have been established, and that the acts of 1842 and 1844, conferring jurisdiction on the Bankrupt Commissioners in matters of insolvency, have worked as ill and operated as inconveniently as it was possible for any legislative measures to do, still we humbly conceive that it would be more advantageous to all parties to suffer things to remain as they are for another year, than to endeavour by patchwork legislation of this description to amend laws which it is avowedly contemplated speedily to place on a totally different footing.

We understand it is also intended to pass through parliament in the present session a Bill "to protect from Vexatious Actions all Persons discharging Public Duties, whether Legislative, Judicial, or Ministerial, and whether imposed by the Common, the Ecclesiastical, or the Statute Law of the Realm." It may be remembered that this was one of the batch of bills introduced by Lord Braugham at an advanced period of the last session of parliament. Its provisions were then printed in the *Legal*

*Observer*,\* but as it attracted little attention in the profession,—never, so far as we could learn, underwent any discussion in parliament, and appeared to have been introduced rather more with the view of aiding a numerical demonstration, than with any serious intention of obtaining a legislative sanction for its provisions, it was not at that time deemed necessary to make it the subject of special comment. It is impossible, however, to glance at the variety of subjects dealt with by this bill without perceiving that its clauses would produce most extensive and important changes in various branches of law. The bill expressly proposes to deal with the law respecting notices of actions, limitations of actions, venue, tender of amends, payment of money into court, pleas of the general issue, and costs. We shall be greatly deceived, if it be not found, upon a careful examination of its provisions, that it unsettles and interferes with other matters of no less importance, to which no direct reference is made. The statute 5 & 6 Vict. c. 97, which was introduced by the present Chief Baron of the Exchequer, when Attorney-General, under the sanction of the then existing government, is repealed in toto, and the new bill proposes "to alter some of the provisions therein contained, and to embody the remainder in a more comprehensive act." Sir F. Pollock's Act is confined in its operation to acts of "a local and personal nature," but the bill under consideration is not thus restricted in its operation, and will be found to repeal, and not reimbody, one of the most important provisions in the statute 5 & 6 Vict., which repeals the provisions in all Local and Personal Acts, whereby any party is permitted to plead the general issue only, and give any special matter in evidence without specially pleading the same. Wherefore it has become necessary to confer this important privilege on persons acting under Local and Personal Acts, as distinguished from ordinary individuals, we are at a loss to understand. But assuming the principle of the measure to be unexceptionable, and that persons acting in public capacities require some protection in addition to that which the law and their own positions secure to them,—a proposition, however, which we desire to see proved,—still provisions involving such extensive practical changes in the administration of the law will not, we trust, be suffered to

\* *Ante*, vol. 32, pp. 91, 92, and 93.

pass through the houses of parliament without more time for consideration "than the probable duration of the present session is likely to afford." The advocates for popular rights may find more than one section in this bill deserving their attention.

We cannot close these remarks without adverting to the reported proceedings of the Law Amendment Society, at the annual public meeting holden on the 5th of June last. Lord Brougham is often powerful, and always amusing; but it is not easy to understand how he could have preserved his own solemnity of countenance, or persuaded his auditors to resist the impulse of laughing outright, when he took credit on that occasion for the remarkable caution and circumspection manifested in the preparation of those recent changes in the law and its administration, with which his lordship's name and character are indissolubly associated. The noble and learned lord, as might have been expected, illustrated his proposition by a reference to the experiments made in the Law of Debtor and Creditor, and the abolition of imprisonment for debt, which afforded signal examples of philosophic foresight and cautious consideration! The history given of the provision in the 7 & 8 Vict. c. 96, which abolished arrest in execution for sums under 20*l.*, is curious, instructive, and singularly complimentary to that branch of the legislature which reckons Lord Brougham amongst its most active members. As his lordship stated, "the House of Lords were informed by petition, that twenty-five people were confined in a place ten feet square, without any bed, not even straw or water. The house was alarmed at this statement, and the legislature in consequence passed an act abolishing all arrests, either on execution or mesne process, under 20*l.*" It is to be hoped that in making this statement, his lordship only describes the impulsive humanity which influenced a single member of the House of Lords, and that the legislature, in making so important a change in the law and the relations of debtor and creditor, acted upon sounder and more comprehensive principles than Lord Brougham imputes to them. If prisoners were so insufficiently accommodated in any gaol in the kingdom as that twenty-five were huddled into a space scarcely sufficient for one, it might afford an abundant reason for passing an act for securing adequate accommodation for prisoners confined in gaol for debt, and

might, perhaps, justify the infliction of some penalty on the local authorities who displayed so much indifference to the duties of humanity; but it afforded no sufficient ground for abolishing arrest for debt throughout the kingdom. However preposterous the motives that may influence individual members, the House of Lords would still sustain its character as a deliberative body, and fail to maintain the influence it exercises upon public opinion, if it were possible to conceive it legislated upon considerations so partial and short-sighted. Although Lord Brougham may be, and we have good reason to believe is, fully justified in stating that "the Law Amendment Society had nothing to do with the measure in question," and is possibly right in conjecturing, that "if the act had come through that society, it would have been carefully examined and deliberated upon by a committee, it would have been thoroughly sifted before it came before the legislature, and guards would have been inserted in it for the protection of all parties;" yet we must be permitted to retain a greater degree of respect for the House of Lords as a deliberative assembly than it would be possible to entertain, if we did not doubt the accuracy of his lordship's testimony as to the circumstances under which this important change in the relations between debtor and creditor was effected.

#### ABOLITION OF A MASTERSHIP IN CHANCERY.

A bill has just been introduced by the Lord Chancellor for abolishing one of the offices of Master in Ordinary of the High Court of Chancery.

It recites the Act of 3 & 4 W. 4, appointing Masters and giving Salaries, &c. to their Clerks.

It also recites the 5 Vict., abolishing the Mastership of the Equity Exchequer; the appointment of Mr. Richards, and the resignation of Mr. Lynch.

It then provides, "That it shall be lawful not to fill up the office so vacant; but that the same shall be abolished."

The chief and second clerks may be retained for a period not exceeding twelve months.

And compensation is to be allowed by the Lord Chancellor, with the consent of the Com-

missioners of the Treasury, to Mr. Barrett, the chief, and Mr. Wright the second clerk, to be paid out of the Suits Fund.

## REPORT OF THE SELECT COMMITTEE ON LEGAL EDUCATION.

THE committee having examined and considered the facts and reasonings stated in their report on the several questions referred to them, have come to the following resolutions :—

“1. That the present state of legal education in England and Ireland, in reference to the classes professional and unprofessional concerned, to the extent and nature of the studies pursued, the time employed, and the facility with which instruction may be obtained, is extremely unsatisfactory and incomplete, and exhibits a striking contrast and inferiority to such education, provided as it is with ample means and a judicious system for their application, at present in operation in all the more civilised states of Europe and America.

“2. That this is shown, in a striking degree, in our public institutions. In none of our collegiate establishments, serving as places of preliminary study to our universities, are any legal courses, however elementary, pursued. In neither of the two great universities of England, Oxford and Cambridge (the latter claiming a faculty of law), are there more than two chairs, the one on civil, the other on English law; one of these chairs is usually neglected, the attendants few, or none, the lectures, from want of hearers, even where the professor is zealous, so rare, that they have been finally discontinued; the other, though the more efficient, and better frequented, is still inadequate; the decrees conferred require for their acquisition a very small degree of application or acquirement; the certificate of a very limited number of lectures, and a few exercises, are sufficient. The University of Dublin is in nowise superior in any of these particulars, whatever be the exertions or wishes of professors. In the University of London, especially in University College, efforts have been made to supply these wants, and for a time proved successful. In the College of Haileybury, such requirements have been better met, but they are limited to students for India. There is thus no course, sufficiently extensive, available or accessible, for the general student, still less for the professional. The Inns of Court have long since, in England, discontinued their lectures and readings; in Ireland they do not appear to have been ever given. Exercises altogether nominal have been substituted; and these, with a certain number of attendances, or presumed attendances, on dinners, are the only conditions at present insisted on for admission to the bar. No better provision has been made by the public for the instruction of the solicitor. Substitutes and remedies for these defects have been sought by the future barrister, in attend-

ance at a special pleader's, or conveyancer's office; and by the future solicitor, in being articulated to the solicitor, and by being required to answer an examination previous to admission; but the first, though well calculated to communicate minute practical knowledge of forms and technicalities, cannot be considered as a substitute for that systematic and comprehensive information, and philosophic spirit, which are the highest qualities of the lawyer; and the second, as usually conducted, though useful in training to the mechanical drudgery of the profession, is not sufficient for the higher and more important duties of the solicitor; defects much enhanced by his previous indifferent education, and the absence of sufficient educational or examination tests. No professional education of any extent, or at all adequate to the end in view, is provided for the practitioner in the Ecclesiastical Courts, the diplomatist, or the administrative professions which on the continent have attracted the greatest attention, and for the education of whose members such ample means have been contributed by the state.

“3. That it may therefore be asserted, as a general fact to which there are very few exceptions, that the student, professional and unprofessional, is left almost solely to his own individual exertions, industry, and opportunities, and that no legal education, worthy of the name, of a public nature, is at this moment to be had in either country.

“4. That it does not appear to us that this state of things is defensible, much less desirable. However undeniable the high reputation for capacity and character which the bar has attained in both countries, and the great eminence to which some of its members (Mansfield, Blackstone, Sir William Grant, &c., &c.,) amidst all these drawbacks have attained, it is still not less true that their talents would have suffered no diminution by an improved system of preliminary study, that none of their faculties would have been abridged of their energy, whilst it is not less unquestionable that much that is now erroneous and insufficient would have been noticed and remedied, and that the profession and the public generally would have largely gained. The care which we bestow on the education of the theologian and physician, in the interest of society as well as of the individual, arises from this conviction; nor has your committee received any evidence which would lead them to exclude from the operation of such a principle the education of the barrister or solicitor.

“5. That this conviction is not less strong, when we come to a careful consideration of the results of the present want of legal education as they affect the student and society. The general student being without the means even of an elementary legal education as part of his general course in the university, proceeds to the active business of life, and the discharge of duties which a free country and popular constitution confide to him, very inadequately prepared for the purpose. He is called on to act

as magistrate, legislator, administrator, with insufficient knowledge, crude ideas, and false views. The professional man suffers still more. The barrister has to obtain his knowledge by practice only, and must, more or less, however it may be useful as an instrument in acquiring immediate wealth, feel when called to a higher sphere of usefulness and duty in his profession, that technicalities will not supply the want of the spirit and wisdom which should regulate their use. The solicitor comes ill entitled, through want of the qualities which sound and careful education can best give, to that confidence and reliance which the very delicate and complicated nature of his duties demand. The minister or consul abroad has experience only to guide him, and in the many international questions which may arise, looks principally to precedent for guidance and support.

"6. That amongst other consequences of this want of scientific legal education, we are altogether deprived of a most important class, the legists or jurists of the continent; men who, unembarrassed by the small practical interests of their profession, are enabled to apply themselves exclusively to law as to a science, and to claim by their writings and decisions the reverence of their profession, not in one country only, but in all where such laws are administered.

"7. That we do not ascribe these defects to individuals, but to our peculiar system and practice. The legal education of the continent is conducted almost exclusively in the universities, and the universities are regulated on a totally different system from ours. Jurisprudence forms one, and often the chief of the four faculties. Through that faculty, supplied with numerous courses, and tested by efficient examinations, not only must the future lawyer, jurist, civilian, and solicitor, but the future diplomatist and official, necessarily pass. Nor is this all: to this large cultivation of law the two last must add a large amount of political, statistical, and economical knowledge. Without such preparation, well proved by a series of examinations, there exists no official eligibility. In our universities, not only is the general student uninitiated in such studies, but even if he were disposed to attend to them, his ambition is stimulated by higher rewards in other branches, and by the exclusive and absorbing cultivation of, especially, the mathematical and classical divisions of his course. There is little time, little inclination, little inducement, no compulsion. Degrees in law are no more than cheaply acquired substitutes for degrees in arts. The immediate and practical advantage outweighs the distant and theoretical. It is not under such circumstances that the "*ad libitum*" law courses of the universities are likely to be attended, and if attended, to be continued with efficiency for any length of time.

"8. That your committee have not, however, come to the conclusion that this state of things does not admit of correction; on the contrary, they have received, during their course of inquiry, very direct and unquestionable proofs

from all classes, professional and unprofessional, not only of the necessity, but also of the facility of reform. Already commencements, with no small degree of success, have been made, by the establishment and operations of the "Law Institute" in Dublin, and in London and Manchester by the institution of their respective Law Societies. The concurrent evidence of many eminent members of the profession is not less indicative of general assent to these opinions; but even were this wanting, we have, in the recent recognition of the same principles, and in the efforts for carrying them into operation in the proceedings of the University of London and the Inns of Court, not only testimonies to the same effect, but encouragements and pledges for the future. The period thus appears to have fully arrived when larger, wider, and more systematic co-operation may be demanded and expected, and when suggestions from the legislature will not be disregarded by the public, but especially by professional bodies. In these matters the best labourers are the voluntary, and no reform is likely to be so general, effective, or permanent as that which is the result of the calm deliberations and matured convictions of those directly concerned.

"9. That a system of legal education, to be of general advantage, must comprehend and meet the wants not only of the professional, but also of the unprofessional student.

"10. That legal education for the general unprofessional student can scarcely be commenced on any extended scale, earlier than the period of university education; and that it will be therefore unnecessary to offer any recommendations in reference to preparatory or high schools, or other institutions of a more collegiate character, with the exception of the provincial colleges, Ireland, which being constructed on the university principle, and likely to prove at some future day colleges of an university, may admit the establishment, amongst other chairs, of chairs of law, for which permission is already given by the charter. As, however, it may be apprehended that in incipient institutions less interest and demand may be felt for such department, especially when established in the provincial towns of Ireland, it is deemed advisable, with a view of general or non-professional, rather than of professional education, that such chairs should comprise, amongst their courses, besides the general principles and elements of jurisprudence (the base and introduction to all legal study and the natural sequel to history, mental and moral philosophy,) courses also of constitutional law, comparative constitutional law, political and commercial geography, statistics, and political economy.

"11. That an outline of the history and progress of law, with the elements of jurisprudence, from approved text-books, might very advantageously form a portion of the under-graduate's course in the English and Irish universities, in continuation and illustration of the elements of history and mental and moral philosophy: and

should the present course of academical studies be so extensive as to preclude such addition (which may be doubted), such portions thereof as are of comparatively minor importance might be suppressed, so as to allow the proposed law studies to be substituted.

"12. That in order to give efficiency to such change, two examinations should be admitted, the one of the character usually required to qualify for degrees in arts, the other such as is required for honours.

"13. That with a view of making similar provision for the more advanced students, especially such as propose to devote themselves to the legal or even clerical profession, it appears essential that greater efficiency should be given to the existing chairs; and in proportion as the study shall be more cultivated, greater extension to the courses and a greater number of chairs to each department. To realize this, it will be necessary that greater advantages should be attached to the law degrees, and a greater amount of study and knowledge be demanded for their acquisition. Certain situations now limited to barristers of seven years' standing, might be, with due precaution, extended (provided such other reforms accompanied as really rendered degrees evidence of study and ability) to bachelors of law; others, again, more valuable and important, to doctors. For other offices again of a mixed administrative and legal, or even of a purely administrative or official character, might, as condition of eligibility, be required (after a certain period, of which due notice should be given) the degree of doctor. It is the influence of this regulation, to a degree, which contributes so materially to raise and encourage legal studies on the continent. The conditions for the acquisition of legal degrees might, with the approval of the judges, be easily rendered more stringent. A rigorous examination, preceded by certificates of attendance on lectures, and by minor periodical examinations at the close of each course, should be exacted. Optional courses can only be of avail when the taste and utility of such branches of study is widely and intimately felt. It would, perhaps, be better at first to have none but such as are strictly obligatory. Connected with the chairs of civil law, might be instituted chairs of international law, and colonial law, for such as might find it necessary or advantageous to attend them; and with the chair of English law, and subsidiary to it, chairs of constitutional, comparative constitutional, and municipal law, might successively be established, for the convenience and instruction especially of such general students as might wish to prosecute their studies in the universities, farther than the proposed elementary legal course of the under-graduate.

"14. That to render these lectures of benefit, your committee are strongly impressed with the importance of accompanying all lectures with as much of private instruction and questioning as may be practicable, but especially with periodical examinations; which may thus afford tests not merely of a given amount of know-

ledge, but, to a great degree, of assiduity and perseverance in acquiring and retaining it.

"15. That it appears from evidence before your committee, that the professional student could scarcely acquire, even with these additions, that special and thoroughly professional education necessary for professional success, at an university. The necessity of residence, the absence of the living and practical illustrations of the profession itself, the general and theoretic, and unprofessional or popular nature of the instruction given at an university, naturally render it necessary, for the education of the professional man, that some institution more special and characteristic should be provided; in other words, a college of law seems not less important to the lawyer than a college of surgery or medicine to the surgeon or physician. It is the natural close, preliminary to entering upon practice, of that for which the university may be considered, in many particulars, as the preparation.

"16. That this institution is to be sought rather in the application, if possible, of old establishments than the erecting new ones, from the guarantee which the former give of order, efficiency, and permanency; and that such institutions are, to a great degree, to be met with in the "Inns of Court" in both countries. In direct connexion with the bar, under the superintendence of its highest authorities, the judges, or of its most distinguished members, the benchers, with old prescription, ancient privileges, very large accommodations, ample funds, and venerable associations, immediately interested in the progress and honourably jealous of the fame of the profession, no bodies could be more appropriately selected, if willing or likely to be more willing, when once they shall have entered upon the task, than the Inns of Court. No violent or inappropriate innovation is attempted to be forced upon them. They resort only to their own ancient statutes and practices, and resume anew the original objects of their institutions.

"17. That to give effect to this application of the Inns of Court, to the purposes of a special or professional law college, it appears much more advisable that the several inns in this country should co-operate; and instead of each providing for its own use or that of its students, a series of lectures on all great departments of civil and English law, that should rather furnish each its quota to the general course, in that department which is most congenial to its constitution; and to admit indiscriminately, on payment of the same fees, all students of the Inns of Court, no matter of what inn, without distinction. The four inns would thus form, for all purposes of instruction, a sort of aggregate of colleges, or, in other words, a species of "law university." The "King's Inn" in Ireland, adopting the same course, but forming one body, would, like its university, be at the same time college and university.

"18. That in order to give full effect to these lectures, it appears to be advisable that en-



trance into the Inns of Court, like entrance into an university, should be preceded by an examination by way of matriculation, to which should be considered equivalent a degree in arts, but especially if the changes above recommended were carried into effect in the universities, a degree in law. The lectures should be accompanied with questioning and examination daily, and with an examination of greater length and minuteness at the termination of each course. Finally, before applying for admission to the bar, the student should be required to pass a probationary or qualifying examination, and permitted to go through an additional one for honours the notice and record of which, after examination, should be kept and published. It has been doubted how far the benchers would be authorized to impose such regulations, but the imposition of certain exercises, (though now merely formal,) and the condition required of attendance on dinners, seems a very distinct exercise of such power, whatever may be thought of the manner in which it is exercised.

"19. That the appointment or revocation of the professors should be left to the governing bodies of the respective Inns, as well as their endowment; that the endowment should be partly paid by salary and partly by fees, thus combining independence with motives for exertion; the number of lectures regulated as well as hours when given, on the joint arrangement of several Inns, and with reference to the subjects and attendance on lectures.

"20. That it would be advisable to begin with the great branches only of the law, but highly desirable, as the system advanced, to add such other chairs as in the first instance the exigences of the profession itself required, and, in the next, as might be of utility to the profession and to the public generally, such as chairs of international, colonial, constitutional law, medical jurisprudence, municipal, and administrative law, &c., &c. In this view also, and for the purpose of giving more extension, and, at the same time, more energy and efficiency to the plan, a system somewhat analogous to that in use in Germany might be adopted, namely, lectures might be given; some suited to the public at large, or 'public lectures;' others appropriated to the special purposes of the profession, or 'private;' and others, again, limited to the more diligent and advanced pupils, of the professor, or 'most private;' and which last might advantageously be combined with attendance at the special pleader's or conveyancer's office.

"21. That the final examination should be left to a body of examiners, appointed by the Inns in common, and selected from each of them respectively, with the cognizance and approval of the judges.

"22. That all matters of a common nature might with advantage be discussed, adopted, and executed by a joint body, elected from the benchers of the several inns for this purpose. To them might be referred the several ques-

tions of arrangement of the course, examinations, honours, &c., thereby virtually constituting them the 'caput' of this legal university. The period of office, mode of election, extent of functions, should be matter of previous regulation by the bodies themselves.

"23. That to give the same constitution and character to the society of the King's Inn, Dublin, to which analogous duties and powers should be entrusted, it would be advisable that it should previously be incorporated, but so as to guard and secure the relative rights and obligations of the two branches of the profession.

"24. That it would be highly advisable to substitute for attendance on term dinners in the several Inns, attendance on term lectures, the number and nature of which, and how far obligatory, and how far optional, to be determined by common consent and on an uniform plan; and that students in England and Ireland should be entitled to make use of certificates of such attendance, whether in the Inns here or in Ireland, as qualifying them (other conditions being also fulfilled) equally for admission to the bar.

"25. That in providing for the special legal education of a solicitor, a stringent examination should be required in proof of a sound general education having been gone through previous to admission to apprenticeship. That this examination should embrace, in addition to the ordinary acquirements of a so-called commercial education, a competent knowledge of at least Latin, geography, history, the elements of mathematics and ethics, and of one or more modern languages.

"26. That for the further education of a solicitor, it would be highly advisable he should also have, even whilst an articled clerk, opportunities for attendance on certain classes of lectures in the Inns of Court, and also on others of a nature more special to his own profession, in the law society of which he might happen to be a member.

"27. That to render more beneficial societies which embrace the double purpose of surveillance over the profession and of instruction, it would be advisable to keep the purposes distinct, and to adopt, in the appointment of professors, rules analogous to those recommended to the Inns of Court.

"28. That the examination of the several courses which the future solicitor should be required to attend, should be marked equally by a certificate and examination, and that the final examination, as a condition for admitting to the profession, should be conducted more in reference to general principles than technicalities, (as appears now to be the case,) by enlarging and improving the examination papers, and calling in some of the examiners of the Inns of Court.

"29. That it should be in the power either of the governing bodies of the Inns of Court, or of the Solicitors' Societies, to admit the certificates of attendance on lectures in the universities, to a certain extent, as exempting from attendance on their own.

30. That it might be advisable to found law scholarships and other endowments in either the Universities or the Inns, or both, for the purposes of encouragement.

"31. That annual reports should be made to parliament of the state and progress of the system in all its bearings.

"32. That these arrangements should as much as possible be carried out by common consent and co-operation.

"33. That for this purpose, delegates should be invited to meet from the Inns of Court, King's Inn, and the Solicitors' Societies, Dublin, and communications for the same purpose should be had with the Universities.

"34. That in the failure only or neglect of such invitation, or refusal to take active and efficient measures to carry into operation the reforms proposed, recourse should be had to a commission, to be composed, however, partly of legal and partly of official members."

### PROMISSORY NOTES PAYABLE TO MAKER'S ORDER.

WE took occasion, in a recent number,<sup>a</sup> to direct the attention of our readers to the decision of the Court of Exchequer, in a case of *Flight v. Maclean*,<sup>b</sup> whereby it was holden, that a promissory note payable to the drawer's own order was invalid within the statute 3 & 4 Anne, c. 9, which, it was said, required such an instrument to be made payable by the party making it to some other person, or the order of some other person, or to bearer. It was then observed, that the question had been brought under the consideration of the other courts of law, and that considering the great number of promissory notes in circulation throughout the kingdom, which this decision would invalidate, it was of the utmost importance that the matter should be speedily settled. We have now the pleasure to state, that on the last day of Trinity Term, the judgment of the Court of Queen's Bench, after taking time to consider the question, was pronounced on this point by Lord Denman, in a case of *Wood v. Mitton*. The point arose upon a motion in arrest of judgment, and was very fully argued. The Court of Queen's Bench has come to a different conclusion from the Court of Exchequer as to the validity of promissory notes payable to the maker's order. The judgment of the Queen's Bench proceeds exclusively upon the construction of the statute of Anne, founded upon an elaborate consideration

of its provisions. The subject is of sufficient importance to justify the earliest announcement of the fact, in anticipation of the report of the case which we hope on an early occasion to submit to our readers.

### METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

THE Several Law Societies are affording valuable aid to the new association. We have already shown the views taken of its plan and objects by the Incorporated Law Society.<sup>a</sup> And have now to add the testimonies of support given by the societies at Leeds and Manchester.

The Liverpool Law Library has sent a subscription of 25*l.*, and the leading members of the Law Society there are particularly active in behalf of the association.

#### LEEDS LAW SOCIETY.

At a meeting of the Leeds Law Society, held 28th May, 1847,—present, Mr. Richardson in the chair, Mr. Bloome, Mr. Booth, Mr. Barr, Mr. Clapham, Mr. Lofthouse, Mr. Bulmer, Mr. Markland, Mr. Harrison, Mr. Horsfall, Mr. Cariss, Mr. Shaw, secretary.

It was moved by Mr. Bloome, seconded by Mr. Booth, and resolved, That upon hearing the address read which has been forwarded to the secretary of this society by the Committee of Management of the Metropolitan and Provincial Law Association, this society approves of the same, and will give its support and cordial co-operation in carrying into effect the objects of the association.

That the secretary be requested to transmit a copy of the address to the solicitors in Leeds and the neighbourhood, and urge their becoming members of the association.

That a deputation from this society, consisting of Mr. Shaw, Mr. Barr, Mr. Sangster, and Mr. Eddison, and such other members of this society as may happen to be in town during the ensuing month, be requested to call upon Mr. Beckett and Mr. Oldham, the borough members, and upon such gentlemen as may offer themselves as candidates at the next election, and present them with a copy of the address, and urge their serious consideration of the several topics contained in it.

That the thanks of this society be given to Mr. Shaw and Mr. Barr for their valuable services in the formation of the association.

#### MANCHESTER LAW ASSOCIATION.

A meeting of the members of the Manchester Law Association was held on Tuesday, June 8th, to take into consideration the address issued by the "Metropolitan and Provincial As-

<sup>a</sup> *Ante*, page 68. <sup>b</sup> 16 Law. J. 23, Exch.

*Ante*, page 69.



sociation,"—present, Mr. Eccles, in the chair, Messrs. Taylor, Earle, Parry, Petty, Whitlow, Gill, Street, Grave, Tidswell, Foster, Neild, Fearnese, Somerscales, &c.

Mr. Taylor, the honorary secretary of the association, said that the committee of the Manchester association had already approved of the objects of the new association, but it was thought desirable that they should also receive the sanction of a meeting of the members of the association.

Mr. Earle, in moving the first resolution, said that every one present was aware of the crude state, not only of the statute law, but of that laid down by the judges. No person who took up a cause could foretell its issue with any certainty, and the most eminent members of the profession were divided on the construction of a very few words in an act of parliament. Any one who paid attention to the railway litigation, would see how uncertain were the decisions of the courts. He believed that the profession, at least in Manchester, were rapidly coming to be looked upon as advisers rather than keep parties out of litigation than to enable them to succeed in it. It would be of great consequence to the country, if the new society would endeavour to effect, as their address set forth, a complete reform of the present crude system of legislation.

Then, as to the exclusion of attorneys from offices of honorary distinction,—it had of late been considered necessary by parliament to put barristers into every such office, to the exclusion of attorneys; he thought that was because the profession had never associated together generally and asserted their rights, but had allowed themselves to be trampled upon by every one who went into the house of commons. They had not in that house a single man to stand up for them, and he thought it would be of the greatest importance if they could get some representative there. With regard to that part of the address which related to attorneys practising as advocates, and to parliamentary agents, it would be a very great saving to the clients if it could be arranged amongst attorneys of competent skill to act as advocates before committees of the house of commons; and there was no great difficulty in the matter, for he was sure that the committees would be as willing to hear attorneys as barristers.

The address recommended that a higher degree of classical literature, of science, and of general knowledge, than was ordinarily possessed, should hereafter be required, before the clerk was allowed to be articulated. All would agree that there were a great number of persons admitted to the profession, some with education, and some without that uprightness of character which they should possess. Unless a right moral direction were given to the young, they all knew that the temptations of the profession were such that they were apt to go in a wrong direction. If such an education as that recommended were given to the young men, he thought it would be brought to bear

in practice, not only on the younger, but even on the older members of the profession. If they gave a right moral direction to the young members of the profession, they would be tending to relieve the profession from the stigmas too often cast upon it. He then moved the first resolution, approving the objects of the new society, and pledging the Manchester Law Association to its support.

Mr. Grave, in seconding the motion, said that he supported the new association because it not only sought their own advantage as a profession, but also that of the public at large. If the legislature would adopt the practice of referring more to solicitors, they would have very different legislation from what there was now. He was sure, with respect to the bankruptcy laws, that if a commission had been issued from the crown to a dozen solicitors in Manchester, they would have had a law far more just to the solicitors and the public than any of the bills now before parliament. It should be made to appear to the legislature that the attorneys were not seeking their own personal class interests, but the interests of the suitors, and to improve the legislation of the country. The resolution was then passed unanimously.

Mr. Grave said that the origination of the Metropolitan and Provincial Law Association was entirely owing to the committee of the Provincial Law Association, and probably to one member of that committee—Mr. John Hope Shaw, of Leeds. He then moved the thanks of the Manchester Law Society to the committee of the Provincial Law Association, and particularly to Mr. John Hope Shaw, for their exertions in the formation of the Metropolitan and Provincial Law Association. Mr. Gill seconded the motion.

Mr. Taylor said that about the middle of last year the Leeds Law Society circulated a series of resolutions showing the state of the profession, and the importance, if possible, of obtaining a general union, so that they might act as a powerful and united body, instead of being, as they were, without power individually. Those resolutions were submitted to the consideration of the Provincial Law Association, who took up the matter. The great difficulty was to obtain the co-operation of the London solicitors, whose interests did not exactly agree with the interests of the country solicitors. However, by leaving the points of difference out, the desired union was effected, and chiefly through the exertions of Mr. John Hope Shaw, of Leeds. The resolution was then passed unanimously.

It was then moved by Mr. Ackers, seconded by Mr. Whitlow, and passed unanimously, "That the honorary secretary circulate the above resolutions among the members, and urge them to send in their adherence to the Metropolitan and Provincial Law Association." The thanks of the meeting were then given to the chairman, on the motion of Mr. Taylor; and after Mr. Eccles had acknowledged the compliment, the proceedings terminated.

The *Manchester Guardian*, from which the preceding report has been extracted, contains the following summary of the scope of the new association :—

“An association, called ‘The Metropolitan and Provincial Law Association,’ has been lately formed by a union of metropolitan and provincial solicitors, the committee of which is to consist of an equal number of each of these classes of the profession. The new association originated in the Provincial Law Association, the office of which is in Manchester. An address from the committee, upon which will be found the names of some of the most highly-respectable solicitors, either in London or the country, was issued early in the last month, which proposes to direct the attention of the profession to the removal of the following grievances :—The taxes on justice in the shape of fees; the present crude system of legislation; the exclusion of attorneys from offices of honourable distinction and the solicitorship to government boards; the exclusive regulations of the Inns of Court; the abridgement of the right of attorneys to act as advocates; the existence of the class called certificated conveyancers, gentlemen under the bar who claim to transact conveyancing business for clients without having given any evidence of their fitness or capacity for so doing; the regulations by which persons are allowed to act as parliamentary agents, by merely signing their names in the private bill office; the taxes in the way of stamp duties which are levied upon attorneys and solicitors; the establishment of a system of remuneration for attorneys and solicitors, in proportion to the labour and skill employed; and the deficient construction and inconvenient situation of the courts at Westminster. The address recommends the extension of local law societies, improvements in education for the legal profession; that information should be from time to time circulated respecting the past and present state of the profession, and the manner in which the public interest is thereby affected; and lastly, that the subjects alluded to in this address should be pressed upon candidates at the approaching general election. This society is entirely distinct from any other, though we believe it will most likely be worked through the medium of sub-committees in the various law societies in the provinces. The new society is to consist of all members of the profession who contribute a donation of not less than 5*l.*, or an annual subscription of not less than 1*l.* to its funds.”

## NOTICES OF NEW BOOKS.

*The Practice of the High Court of Chancery as regulated by the General Orders of the 8th of May, 1845.* By JOHN ROGERSON, Solicitor. Sweet. 1847.

THIS work is well-timed. Though purporting to be merely the practice of the Court of Chancery in the particulars in

which it is altered by the General Orders of the 8th of May, 1845, it is a necessary adjunct to the standard works of practice so long established as guides to the practitioner in our courts of equity. To those practitioners who devote themselves to cases in Chancery it is needless to observe, that the effect of the Orders of 1845 has been very largely to alter the practice of the courts; nor is it necessary to remind them of the uncertainty of which those orders were the parent, and the consequent multitudinous decisions which within the brief space of two years have taken place upon them. Even in this short period the want of such a work as the one before us has been materially felt, and the equity practitioner is here supplied with much valuable information and assistance.

*The Commercial and General Lawyer.* By EDWARD CHITTY, Esq. 5th edition. R. Macdonald, 30, Great Sutton Street, Clerkenwell. 1846.

This work is divided into four books, following the plan of Blackstone. In the part which treats of real property the statute 7 & 8 Vict. c. 76, is mentioned as the last statute for amending the law of real property, and no notice whatever is taken of the statutes of the 8 & 9 Vict., (1845) one of which repeals the 7 & 8 Vict. c. 76. Of course it is expected that a book published in 1846 should notice the statutes of 1845.

In the chapter “Of Barristers,” p. 460, is the following statement of the law in 1846 :—“The serjeants had formerly great privileges in the Common Pleas, inasmuch as no other counsel could plead in that court, except as junior to a serjeant. But, by a warrant from the crown, that court has been thrown open since the commencement of Trinity Term, 1843; so that any barrister may now plead in the Common Pleas as in the other courts of Westminster Hall, while some additional advantages in respect of precedence are in recompence given to the serjeants.” True it is that it was directed by the warrant above-mentioned that the exclusive privilege of the serjeants should cease, but the Court of Common Pleas afterwards decided that the warrant was invalid. Case of the serjeants, 6 Bing. N. C. 235. And it required a statute (9 & 10 Vict. c. 54,) to open that court to the rest of the bar. The sentence above-mentioned could not then have been written or revised in 1846. But it must

have been written before the serjeants' case, and never revised since.

So far as we have been able to ascertain, no notice whatever is taken of any statute passed in the 8 & 9 Vict. (1845): thus, in bankruptcy, the important enactment escapes observation, by which a person may make himself bankrupt on his own petition. It must be remembered that these things are not only serious omissions in themselves, but they shake the confidence of the practitioner in every statement in the work.

### ABOLITION OF THE PUBLIC OFFICE IN CHANCERY.

THE Bill introduced by the Lord Chancellor on the 11th inst., for the Discontinuance of the Master in Ordinary of the High Court of Chancery in the Public Office, and for transferring the Business of such Public Office to the Affidavit Office in Chancery, is a useful measure; and the Judges of the Common Law Courts should in like manner be relieved of the interruption of swearing affidavits.

The following are the clauses of the bill:—

1. Attendance of Master in ordinary in public office dispensed with.
2. Lord Chancellor may appoint a second assistant clerks of affidavits.
3. Appointment of, and saving of rights of, W. T. Smith, under the 1 & 2 W. 4, c. 56; 5 & 6 Vict. c. 103, and 6 & 7 Vict. c. 73.
4. Commencement of act — 10th August next.
5. Lord Keeper, &c. may act for Lord Chancellor for purposes of this act.
6. Act may be amended, &c.

### ABOLITION OF THE COURT OF REVIEW, AND ALTERATIONS IN THE JURISDICTION IN BANKRUPTCY AND INSOLVENCY.

WE have elsewhere adverted to this bill. The following is the substance of the clauses:—

1. Court of Review abolished.
2. Jurisdiction of court transferred to a Vice-Chancellor.
3. Laws and Orders to apply to Vice-Chancellor so sitting.
4. Jurisdiction of Court of Bankruptcy, under 6 Vict. c. 116, and 8 Vict. c. 26, trans-

ferred to Insolvent Debtors' Court and to County Courts.

5. Jurisdiction of Insolvent Debtors' and County Courts.

6. Acts to apply to the cases of persons petitioning, although they may have been already in prison, &c.

7. Petitions now pending in Insolvent Debtors' Court to be disposed of there.

8. Jurisdiction of Insolvent Debtors' Court on *circuit* transferred to County Courts.

9. Lord Chancellor to give directions for sittings of Court of Bankruptcy elsewhere than in London.

10. Travelling expenses provided for.

11. Vacancies in office of commissioner not to be filled up till end of next session of parliament.

12. Commencement of Act.

13. Act may be amended, &c.

### COSTS IN THE COUNTY COURTS.

WE some weeks ago inserted a communication from an intelligent correspondent at Reading on the operation of the New County Courts Act, in cases under 5*l.*, exemplified in a recent case tried there. We trust the attention of the profession will be drawn to the proper remedy for the anomalous state of things which now exists.

In all *disputed* cases under 5*l.*, the operation of the act is practically a denial of justice altogether, as the right to proceed in the courts above (where costs can still be obtained) is taken away, and it is futile to suppose, that a plaintiff will ordinarily expend a larger sum for professional aid than he is likely to recover in a successful issue of the action.

The question is virtually important as well to the public as the profession. A fair construction of the act would lead to the conclusion, that the costs limited by the act are those of *advocacy* only, and that for labour otherwise performed, the ordinary rules of costs, after suit commenced, ought to prevail. Should this not be the case, the profession generally must abandon the practice of these courts, which have in the country been hitherto attended by most respectable practitioners, as the advocacy-fee alone cannot compensate them for investigating the case and preparing for trial,—without doing which, an attempt to conduct the case in court can only terminate in delusion and mockery.

\* See *Ante*, page 162.

# ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

## Courts of Equity.

### PRACTICE.

#### ACCOUNT.

See Decree, 3; *Elegit Creditor*.

#### ADMINISTRATION SUIT.

*Construction of 32nd Order of Aug. 1841.*—The 32nd Order of August, 1841, enabling a plaintiff to proceed against one or more persons severally liable, does not apply to the case of a general administration suit. *Hall v. Austin*, 2 Coll. 570.

#### AFFIDAVIT.

See *Foreclosure; Further Directions; Service of Notice*.

#### AGENT.

See *Principal and Agent*.

#### AMENDING BILL.

1. *General orders of May, 1845.*—All applications for leave to amend under the orders of May, 1845, are to be made in the first instance to the Master. *Coombe v. Ramsay*, 2 Phill. 168.

Case cited in the judgment: *Christ's Hospital v. Grainger*, 1 Phill. 634.

2. *New orders (No. 46).—Indulgence.*—*Setting down demurrer.*—*Costs.*—Unless special grounds for the required indulgence are shown, the court will not depart from its General Orders; nor grant leave to a plaintiff to amend upon payment of 20s., costs to the demurring party, where a demurrer to the whole bill is not set down for argument within twelve days after the filing thereof. *Matthews v. Chichester and others*, 33 L. O. 403.

3. *Construction of 68th Order of May, 1845.*—*Due diligence.*—After an application to amend, under the 68th Order of May, 1845, has been refused by the Master, and the Master's decision has been affirmed on appeal, the plaintiff is at liberty to renew his application to the Master, on fresh evidence, and to appeal again to the court.

If a plaintiff can show a reasonable ground for delaying his application, in consequence of his expecting further information from some proceeding in another suit, the exigency of the order, as to due diligence, will have been complied with. *Combes v. Ramsay*, 33 L. O. 303.

4. *68th Order of May, 1845.*—An order for amending the bill obtained *ex parte* from the court in the first instance, held irregular, though, under the circumstances of the case, the exigencies of the 68th Order of May, 1845, could not be complied with. *Potts v. Whetmore*, 33 L. O. 375.

See *Appeal*.

#### ANSWER.

*New orders.*—*Construction.*—*Discharging order of course.*—The terms "the last answer,"

and "the last of several answers," used respectively in the several orders of May, 1845, numbered 16, (Art. 33,) 66 and 68, refer to the answers put in by the last substantial defendant who has been served with subpoena to appear and answer. Therefore a plaintiff may obtain one order of course for leave to amend at any time within four weeks after the last of several of such defendants has put in a sufficient answer; but this indulgence does not extend to cases where a defendant is merely nominal, or has not been served with subpoena to appear and answer.

To discharge on merits, or otherwise than for irregularity, an order of course to amend obtained at the Rolls in a cause attached to another court, application must be made to the Lord Chancellor. *Arnold v. Arnold*, 33 L. O. 566.

See *Decree*.

#### APPEAL.

*Amendments under the new orders.*—The Lord Chancellor will not hear appeals from the Master's office in the matter of amendments under the new orders. *Coombes v. Ramsay*, 33 L. O. 375.

See *Further Directions*, 2.

#### APPEARANCE.

*29th Order, 1845.*—Where a subpoena had, by order of the court, been served upon the solicitor of a defendant out of the jurisdiction of the court, the plaintiff cannot, under the 29th Order of May, 1845, obtain leave to enter his appearance. *Sewell v. Godden*, 33 L. O. 550.

#### ATTACHMENT.

1. *Irregular or erroneous order not a nullity.*—An order of the court of which the party affected by it has notice, though not formally served upon him, is not to be disregarded or treated as a nullity, however certain it may be that the order is erroneous, and would upon a proper application for that purpose be discharged. *Chuck v. Cremer*, 2 Phill. 113.

*Infant trustee.*—Process by attachment to compel an infant to convey estates sold in a creditor's suit.

It is contempt to interfere and prevent an infant obeying the order of the court to convey. *Thomas v. Gwynne*, 8 Beav. 312.

#### CHARITY.

*Trustees.—Payment of dividends.*—The trustees of a charity being numerous, an order was made to pay the dividends of a fund in court, to the trustees or any two of them. *Attorney-General v. Brickdale*, 8 Beav. 223.

#### CONTEMPT.

*Pro confesso.*—A defendant having appeared, but being in contempt for want of answer, and appearing at the bar pleading her poverty, the court directed a reference on that point. The Master reported that she had not proved her poverty; and, on the application of the plaintiff, the court directed a writ of *habeas corpus cum causis*, to issue for bringing her to the bar, and directed that the proper officer should attend at the return of the writ with the record,

in order that the bill might be taken *pro confesso*. Subsequently an order was made by consent. *Bull v. Falkner*, 33 L. O. 525.

#### CREDITOR'S SUIT.

*Same estate.—A stranger to suit interfering.*—The court will not, on the ground of irregularity in a decree in a creditor's suit, take the conduct of the suit from the plaintiff, and give it to another creditor, though collusion be suggested.

Where decrees had been obtained in two creditors' suits for the administration of the same estate, the court ordered that the plaintiff in the suit in which the second decree had been made, should be at liberty to attend the proceedings under the first decree; but on the ground that he was a stranger to the suit, refused to give him the conduct of it. *Smith v. Guy*, 2 Phill. 159; see 33 L. O. 302.

#### COSTS.

See *Amendment of Bill*, 2; *Irregularity*, 2, 3.

#### DECREE.

1. *Inquiries upon a suggestion in an answer.*—Where at the hearing of a cause an inquiry is directed, founded on a suggestion in the answer, it ought to be strictly limited to the specific case suggested.

Where an answer suggested, that the plaintiff had for a certain time occupied a house, of which he was tenant in common with several others, and that by virtue of such occupation rent became due to him to those parties, and the bill thereupon amended by charging, that the plaintiff's occupation was not exclusive, and no further answer was put in: *Held*, that the suggestion did not warrant an inquiry whether the plaintiff had been in occupation of the premises during any and what time in respect of such occupation. *M'Mahon v. Burchell*, 2 Phill. 127.

2. *Legacy.—Rent.*—The executor of A. being sued for payment of a legacy, set up as a defence that the plaintiff had for several years occupied a house, a part of an estate of which he and A., and other persons, were tenants in common under the will of B., and that A.'s share of the rent due from the plaintiff in respect of such occupation exceeded the amount of the legacy. *Semble*, the court will not, in a suit so framed, direct inquiries as to the plaintiff's liability for rent, or as to the amount due from him to A.'s estate in respect thereof, although the other parties interested in such inquiries be willing to be bound by them, but will decree immediate payment of the legacy in question, without reference to the counterclaim. *M'Mahon v. Burchell*, 2 Phill. 127.

3. *Account.—Arbitration.—Master's office.*—Accounts being directed to be taken by the Master, liberty was, by consent, given to the parties to submit to arbitration any question of account. The court also gave liberty to the Master to adopt the conclusion, but would not, even by consent, make it compulsory. *Scale v. Fothergill*, 8 Beav. 361.

4. *Irregularity.—Entry nunc pro tunc.*—Any proceedings, however inadvertently had, upon a decree or order not entered in the registrar's book, are irregular and voidable.

An attachment set aside, on the ground that the order on which it was founded had not been entered, through the mistake of the officer, and not through any mistake of the party. An order passed in May, 1837, was, without order, entered in April, 1845: *Held*, irregular. *Tolson v. Jervis*, 8 Beav. 364.

5. *Judgment creditor.*—Form of decree in a suit instituted by a judgment creditor, who had obtained a charge on the lands of his debtor under the 1 & 2 Vict. c. 110. *Quære*, whether the debtor is entitled to an immediate sale? *Carlton v. Farlar*, 8 Beav. 525.

See *Inrolment of Decree; Interpleader Act*.

#### DEMURRER.

1. *General orders.—Time.*—Under the 33rd Order of May, 1845, Art. 1, it is not necessary to limit a time for demurring. *Blenkinsopp v. Blenkinsopp*, 8 Beav. 612.

2. *Construction of the 38th Order of August, 1841.*—Where a bill is generally demurrable, a defendant may, under the 38th Order of Aug., 1841, decline to answer any parts of the bill that he might not choose to answer, although he may have answered several other parts. *Gatland v. Tanner*, 34 L. O. 34.

#### DISMISSAL OF BILL.

1. *16th and 114th Orders of May, 1845.*—A motion to dismiss may be made under the 114th Order of May, 1845, after the lapse of the time mentioned in the 45th section of the 16th Order, and any further period allowed by an order enlarging the time for setting down the cause, notwithstanding such an order shall have been obtained. *Whitfield v. Lequentro*, 33 L. O. 284.

2. *Dismissal.*—An order to dismiss the bill, with costs, against certain defendants who had appeared and demurred, but whose demurrer had been overruled: *Held* to be irregular because it had been obtained without mentioning the fact of the demurrer. *Lewis v. Cooper*, 33 L. O. 283.

3. *Dismissing bill.*—A plaintiff cannot obtain an order of course to dismiss his bill as against a defendant, pending an appeal by the latter. *Lewis v. Cooper*, 33 L. O. 451.

#### ELEGIT CREDITOR.

*Account.*—A suit for an account against an elegit creditor in possession was heard on bill and answer; and the only evidence before the Master to charge the defendant with the rent of certain lands, was the admission in the answer, which was accompanied by a statement that the lands were erroneously included in the *elegit*, and belonged to a third person with whom the defendant had accounted. *Held*, that the Master was not bound to take the entire statement in the answer, but might on the admission charge the defendant with the rent received, and find that the property belonged to the debtor. *M'Dennel v. Alcock*, 8 Ir. Eq. Rep. 127.

**EXECUTION, WRITS OF.**

*Orders of May 10, 1839, (No. 1).—Successive writs of fi. fa.*—Several writs of *fi. fa.* under the 1st of the Orders of the 10th May, 1839, may be successively issued until the whole of the money or costs ordered to be paid shall have been levied. *Spencer v. Allen*, 33 L. O. 500.

**EXCEPTIONS TO REPORT.**

*Form of.—Effect of allowing.*—Every exception to a report ought to tender some proposition on which the court may decide.

The simple allowance of an exception by the court, unaccompanied either by an express declaration or a reference back to the Master, implies an adoption by the court of the proposition tendered by the exception. *Stocken v. Dawson*, 2 Phill. 141.

**FORECLOSURE.**

*Affidavit.*—On a motion by a defendant in a foreclosure suit to stay proceedings on payment of principal, interest, and costs, the defendant need not produce an affidavit to show that he is the only person entitled to redeem. *Piggin v. Cheetham*, 2 Hare, 80, disapproved of. *Reeves v. Glastonbury Canal Company*, 14 Sim. 351.

**FURTHER DIRECTIONS.**

1. *Affidavit.*—An affidavit cannot be received on further directions; therefore, where a plaintiff on further directions produced an affidavit that certain defendants, having no further interest in the matters, had signed a consent waiving service on them of any subsequent proceedings, and asked that the decree might be drawn up without an affidavit of service on them, the court rejected such affidavit. *Attorney-General v. Gell*, 8 Beav. 362.

2. *Appeal.*—Cause set down again for further directions on the petition of defendants out of the jurisdiction at the first hearing, who subsequently appeared, in order to enable them to appeal from the decree. *Prendergust v. Lushington*, 5 Hare, 177.

**GUARDIAN.**

*Infant.—General Orders.*—Notice of an application under the 32nd Order of May, 1845, to appoint guardians *ad litem* to infants whose father was dead, was served at the house of the mother and her second husband with whom the infants were residing: *Held*, sufficient. *Hitch v. Wells*, 8 Beav. 576.

**HEIR.**

*Mortgagor and mortgagee.—Construction of 11 G. 4, and 1 W. 4, c. 60, 4 & 5 W. 4, c. 23, and 1 & 2 Vict. c. 69.*—Where the heir of a deceased mortgagee, to whose personal representative the mortgage money has been paid, is unknown, and a reconveyance is desired, the petition should be presented under the acts 11 G. 4, and 1 W. 4, c. 60, and 4 & 5 W. 4, c. 23, as the act 1 & 2 Vict. c. 69, does not apply. *In re Brown*, 33 L. O. 586.

**INFANT.**

1. *Conveyance by infant will be ordered*

without a reference where the real estate is sold under a decree of the court. *Coombe v. Chapman*, 33 L. O. 376.

See *Attachment*, 2.

2. *Conveyance.*—Order for a conveyance by an infant, without a reference to the Master, upon petition by a purchaser. *Coombe v. Chapman*, 33 L. O. 405.

See *Guardian*.

**INJUNCTION.**

*Patent.*—In a patent case a motion for an injunction was ordered to stand over for the plaintiff to bring an action to establish his right. The plaintiff obtained a verdict, but the defendant tendered a bill of exceptions which could not be determined without some considerable delay. Upon the motion being renewed, the court, under the circumstances, ordered it to stand over till the bill of exceptions had been disposed of.

Principles on which this court proceeds, upon an application for an interim injunction in patent cases. *Bridson v. M'Alpine*, 8 Beav. 229.

**INROLMENT OF DECREE.**

The proper course to prevent the inrolment of a decree is to enter a *caveat*; in the absence of which the inrolment will not be vacated upon the grounds of concealment, surprise, and undue haste. *Lewis v. Hinton*, 34 L. O. 10.

**INTERPLEADER SUIT.**

*Decree before answer.—Collusion.*—The court will not order a bill of interpleader to be dismissed before all the defendants have put in their answers; nor will it infer collusion between the plaintiff and one of the defendants in the absence of an affidavit to that effect. *Masterman v. Lewin*, 33 L. O. 353.

**IRREGULARITY.**

1. *Service on party abroad.*—An order for leave to serve a party abroad is not irregular on the face of it, merely because the affidavit on which it was obtained states only the place of the party's residence, without any other circumstances to warrant the order. *Blenkinsopp v. Blenkinsopp*, 2 Phill. 1.

2. *Notice of motion.—Costs.*—An order discharged for irregularity with costs, though the notice of motion was general. An order may be impeached for irregularity, although the notice of motion do not specify that as the ground of it, the omission being material only as to costs, and not always even as to them. *Brown v. Robertson*, 2 Phill. 173.

3. *Irregularity.—Costs.*—116th Order of May, 1845.—The court refused to strike out a cause from the registrar's book, on the ground that it had been improperly set down before publication, inasmuch as an order of the Master which was irregular and had been treated as a nullity, ought not to have been so treated, so long as it remained unchanged.

The defendant who had obtained the irregular order was allowed his costs, having been

improperly made a party to the motion. *Hughes v. Williams*, 33 L. O. 566.

See *Attachment*, 1; *Decree*, 4.

#### ISSUE.

*Pro confesso*.—It is an established rule, that where an issue is directed to be tried at a certain time, and by the default of one party, unexplained, the trial is not then had, an order will be made to take the issue *pro confesso*. But under particular circumstances, the rule will not be applied, as where material witnesses were unable to attend at the trial. *Hargrave v. Hargrave*, 8 Beav. 289.

Case cited in the judgment: *Casborne v. Barshaw*, 5 Myl. & Cr. 113.

#### JOINT-STOCK BANKING COMPANY.

*Substitution of newly-appointed registered public officer*.—In a suit against a joint-stock banking company constituted under 7 Geo. 4, c. 46, the plaintiff is not required to obtain an order, or to file a supplemental bill for the purpose of bringing before the court a registered public officer appointed subsequently to the filing of the original bill.

*Semble*, That it is irregular, after notice of such substitution, to serve the original public officer with notice of motion to produce documents belonging to the company. *Butchart v. Dresser*, 33 L. O. 549.

#### JUDGMENT CREDITOR.

See *Decree*, 5.

#### JURISDICTION.

The court assumes, that an order of an English court of competent jurisdiction proceeds on a just foundation, and will not enter into the consideration of the merits of it, upon an ancillary proceeding taken here, to enable the parties to remove fraudulent impediments created to defeat the execution of the order. *Taylor v. Wyld*, 8 Beav. 159.

See *Orders of Course*, 1.

#### LEGACY.

See *Decree*, 2.

#### MARRIED WOMAN.

*Next friend*.—*Forma pauperis*.—The court does not require that the next friend of a *feme covert* plaintiff shall be a person of sufficient substance to answer the costs.

Cases stated in which a *feme covert* suing by her next friend, has been admitted to sue *in forma pauperis*. Observations on *Pennington v. Atwin*, 1 Sim. & St. 264. *Dowden v. Hook*, 8 Beav. 399.

Cases cited in the judgment: *Drinan v. Mannix*, 3 Dru. & War. 154; *Collier v. Young*, 25th Oct. 1743; *Valentine v. Walker*, 19th May, 1834.

#### MASTER'S OFFICE.

1. *Setting aside lease*.—*Liberty to attend inquiry*.—An inquiry being directed as to the propriety of taking proceedings to set aside a lease of charity property, liberty was given for the lessee, though not a party to the cause, to

attend. *Attorney-General v. Prettyman*, 8 Beav. 316.

See *Decree*, 3; *Trustee*.

2. *Trustees*.—*Attending reference*.—A. was tenant for life of a trust-fund directed to be invested in government or real securities, with a contingent remainder to his children born and to be born, with remainders over. A. had three infant children.

*Held*, that the solicitors of the trustees, as well as the solicitors of A. and his three children, were entitled to attend a reference to the Master as to the propriety of investing the fund on a proposed mortgage.

If the Master excludes one of the parties to a cause from attending him on a reference, the excluded party need not wait until the Master has made his report, and then except to it, but may apply to the court forthwith to reverse the Master's decision. *Davis v. Lord Combermere*, 14 Sim. 402.

See *Charity*.

#### MESSENGER'S OATH.

The court will not prospectively dispense with the usual oath of the messenger to whose custody an answer is confided. *Rigby v. Pinnock*, 8 Beav. 575.

#### NE EXEAT REGNO.

See *Payment into court*, 4.

#### NEXT FRIEND.

See *Married Woman*.

#### NOTICE.

See *Irregularity*, 2; *Pauper*; *Petition of right*.

#### OPENING BIDDINGS.

*Estate for life*.—On opening the biddings in the case of property held for lives, the court imposed the condition, that the party opening should be bound by his offer if no better bidding could be enforced. *Walond v. Walond*, 8 Beav. 352.

#### ORDER OF COURSE.

1. *Jurisdiction*.—In respect of orders of course made at the Rolls, in a Vice-Chancellor's cause, the Master of the Rolls has no jurisdiction over anything but the alleged irregularity and the incident costs. In such cases the merits or special circumstances cannot be considered by the Master of the Rolls, except upon the question of incidental costs.

The plaintiff in a Vice-Chancellor's cause was under an obligation to obtain an order to revive before the 3rd of April, or have his bill dismissed. He was prevented complying by reason of the defendant's delay in appearing according to undertaking. Subsequent to the 3rd of April, the plaintiff obtained at the Rolls an order of course to revive, omitting all mention of the obligation he was under. *Held*, upon a motion before the Master of the Rolls to discharge the order for irregularity, that the Master of the Rolls had no jurisdiction to consider the conduct of the defendant in not appearing, although it afforded a sufficient answer



to the motion, if brought before the proper jurisdiction.

A party obtaining an order of course is bound to state truly every fact which is material to the question, whether an order ought to be granted as of course or not.

Upon a motion to discharge an order obtained as of course, which ought to have been the subject of a special application, the order is to be discharged on that ground, although there may be merits on which it might have been proper to grant the order. *Holcombe v. Antrobus*, 8 Beav. 405.

Cases cited in the judgment: *St. Victor v. Devereux*, 6 Beav. 584; *Harris v. Start*, 4 Myl. & Cr. 261.

2. A defendant, upon filing his plea, obtained an order of course for his discharge, suppressing the fact that the plaintiff had previously given notice of motion to take the plea off the file. The order was discharged for the suppression. *Wilkin v. Nainby*, 8 Beav. 465.

See *Answer, Last*.

#### PATENT.

See *Injunction*.

#### PAUPER.

*Notice of motion*.—After an order has been obtained by a party to sue or defend in *forma pauperis*, and solicitor and counsel have been assigned to him, he cannot appear in person. *Potts v. Whetmore*, 33 L. O. 284.

#### PAYMENT INTO COURT.

1. *Purchase money*.—A plaintiff, may move to make absolute an order *nisi* obtained by a purchaser in the cause for the payment of money into court. *Snow v. Hole*, 33 L. O. 284.

2. *Certificate of valuers*.—A party will not be ordered, as a matter of course, to pay into court a sum of money, the amount of certain damages ascertained pursuant to its order, by valuers, whose certificate is intended to be used as evidence in the cause. *Bagnall v. Whitehouse*, 33 L. O. 283.

3. Money paid into court in a suit to which three persons were parties, will not be directed to be paid out to two of such persons only upon motion. *Mostyn v. Spencer*, 33 L. O. 428.

4. *Ne exeat regno*.—A defendant who quits England, after having given bail on a writ of *ne exeat regno*, will be ordered to pay into court the amount for which the bail gave their bond. *Lee v. Melendez*, 33 L. O. 501.

#### PETITION OF RIGHT.

*Notice*.—The Lord Chancellor will not make an order for a commission upon a petition of right, without notice to the Attorney-General. *Robson and Ainslie, in re*, 2 Phill. 84.

#### PRINCIPAL AND AGENT.

*Purchase*.—An agent who had purchased lands of his principal, and who, previously to the contract, had entered into a secret negotiation for a re-sale of part of the property at a

profit, declared a trustee for his principal to the extent of that profit. *Barker v. Harrison*, 2 Coll. 546.

#### PRO CONFESSO.

*Order of 1845*.—Under the Orders of May, 1845, a bill must be produced at the hearing, in order to be taken *pro confesso*, though there is one defendant only, and the bill, when so produced, is to be taken *pro confesso*, without any other order. *Brown v. Home*, 33 L. O. 255.

See *Contempt; Issue*.

#### PRODUCTION OF PAPERS.

1. Where a decree or order directs parties to produce books, &c., the Master, under the 60th General Order of 1828, may determine not only as to the books, &c. to be produced, but also as to the parts of them to be inspected. *Duncan v. Varty*, 14 Sim. 393.

2. *Delivery of deeds*.—Deeds brought into court on a suit which has been brought to an end ought to be delivered to the party who brought them in. *Langley v. Fisher*, 33 L. O. 283.

3. *Parties*.—*Construction of Order 23 of August, 1841*.—In a suit by some of several *cestui que trusts* for an account and conveyance to a new trustee, it is sufficient to serve the other *cestui que trusts* with a copy of the bill, and a motion for production will not be refused on the ground of their not being substantial parties. *Johnson v. Tucker*, 33 L. O. 476.

#### PUBLIC OFFICER.

See *Joint-stock Bank*.

#### RECEIVER.

1. *Application of defendant*.—*Mortgage*.—At the hearing of a suit for redemption, the court will not, on the application of the defendant, grant a receiver against the plaintiff, the mortgagor in possession, none being prayed by the bill.

*Quære*, whether it can be done by petition. *Barlow v. Gains*, 8 Beav. 329.

2. Generally, the receiver in a cause ought not to make any application to the court: if he finds himself in circumstances of difficulty, he should apply to the plaintiff to make the necessary application, and on his default the receiver may then properly apply to the court. *Parker v. Dunn*, 8 Beav. 497.

3. Receiver appointed on motion, after decree, though not prayed for by the bill. *Bowman v. Bell*, 14 Sim. 392.

#### RECOGNIZANCE.

*A sci. fa.* on a recognizance set forth, that on, &c., [at Ballinasloe, in the county of Galway,] *M. F.* and two others, of, &c., in the county of Galway, came before *J. R.*, [who then and there was] one of the Masters, &c., [as by the said recognizance of record and enrolled, &c., may appear.]

In the record of the recognizance the words within the brackets were omitted; but at the foot of the recognizance was this note, signed by the Master:—"Taken and acknowledged



before me, at Ballinasloe, in the county of Galway aforesaid.”

Upon *nul tiel* record pleaded: *Held*, that there was a variance. The note at foot is not part of the recognizance.

A case depending at the petty bag side of the court may be heard and determined out of Term. *Reg v. Lynch*, 2 J. & L. 103.

Case cited in the judgment: *Reg. v. Hurley*, 2 Dru. & War. 433.

#### REJOINDER.

See *Subpœna*.

#### REPORT.

1. *Order nisi*.—A reference to the Master was made upon petition in a cause to ascertain what was due to the plaintiff. The Master made a separate report as to part of the claim. *Held*, that the report was not improperly confirmed by orders *nisi* and absolute. *Beavan v. Gilbert*, 8 Beav. 308.

Case cited in the judgment: *Ottey v. Pensam*, 1 Hare, 322.

2. *Interest*.—*Confirmation*.—The Master's report of having computed subsequent interest does not require confirmation. *Anon*, 8 Beav. 314.

See *Exceptions to Report*.

#### RIGHT TO BEGIN.

When a cause is set down upon an objection for want of parties, the defendant begins. *Attorney-General v. Gardner*, 2 Coll. 564.

#### OF COPY BILL.

*Attorney-General*.—23rd Order of August, 1841.—The Attorney-General cannot be proceeded against by service of copy bill under the 23rd Order of August, 1841. *Christopher v. Cleghorn*, 8 Beav. 314.

#### SERVICE OF SUBPŒNA.

1. *Scotland*.—*General orders*.—Leave was asked to serve a *subpœna* on a defendant at Holyrood House. *Held*, that it was not necessary so to limit the order; and leave was given to serve it anywhere in Scotland. *Blenkinsopp v. Blenkinsopp*, 8 Beav. 612.

2. If a defendant is served with a copy of a *subpœna* without the indorsement required by 3rd Order of Dec., 1833, if he come speedily to the court, he has a right to set the service aside with costs. A defendant having obtained an order to enter an appearance for the defendant on an untrue allegation of the regularity of the service of the copy of the *subpœna*, the plaintiff applied to the court and got the order set aside with costs. *Johnson v. Barnes*, 33 L. O. 567.

See *Irregularity*, 1.

#### SERVICE OF NOTICE.

*Affidavit*.—An order obtained upon an affidavit of service of notice of motion, but which service afterwards appears to have been irregular, will be discharged with costs. *Brown v. Robertson*, 33 L. O. 301.

#### SETTING DOWN CAUSE.

*Master's order*.—A defendant cannot, under the 116th Order of May, 1845, set down the cause for hearing and issue *subpœna* to hear judgment pending an order by the Master to enlarge publication as to co-defendant.

An order of a Master, however obviously irregular, is binding on all parties having notice of it until duly set aside. *Hughes v. Williams*, 33 L. O. 566.

See *Amendment of Bill*, 2.

#### STAYING PROCEEDINGS.

1. *Two suits for same purpose*.—Where two suits are instituted for the administration of the same estate, and on a decree being obtained in one of them, an application is made to stay proceedings in the other, the question always is, whether the latter suit asks anything more than can be obtained by the former.

A question between the heir-at-law and next of kin as to conversion of real estate cannot be disposed of in a suit in which neither of those parties is plaintiff. *Rigby v. Strangways*, 2 Phill. 175; S. C. 33 L. O. 282.

2. An order to stay proceedings and pay the costs, obtained *ex parte*, and without notice, is irregular. *Richardson v. Moore*, 33 L. O. 302.

#### SUBPŒNA TO REJOIN.

*Orders of 1845*.—Where a *subpœna* to rejoin had been served before the orders of 1845 came into operation, and no steps had been since taken by the plaintiffs, on a motion by the defendant, the court ordered that publication should pass on a future day. *Day v. Beggel*, 33 L. O. 329.

#### TRAVERSING NOTE.

58th Order of May, 1845.—Circumstances under which a traversing note and the replication were taken off the file. *Towne v. Bonnin*, 33 L. O. 502.

#### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Lord Chancellor.

*Parsons v. Muntz*. May 8, 1847.

ORDERS TO PRODUCE AND TO DEPOSIT DOCUMENTS.—NOTICE OF MOTION—DISCHARGING AN ORDER TO ENLARGE PUBLICATION AFTER EXPIRATION OF TIME GRANTED.

*An order to deposit documents with the record and writ clerks will not be granted, if the notice of motion merely asks that they may be produced before the examiner, and at the hearing of the cause.*

*A motion to discharge an order to enlarge publication will not be entertained by the court, if it cannot be heard before the expiration of the time allowed by the order.*

Mr. J. Parker, on behalf of the defendant, moved to discharge Vice-Chancellor Wi-

gram's order of the 1st of April last, to deposit documents, &c. with the record and writ clerks, and to enlarge publication in the cause for one month. The grounds for the appeal were, first, that the notice of motion upon which the above order had been made, merely asked for the usual order to produce the documents, &c. before the examiner, and at the hearing; and secondly, that the plaintiff was not entitled to an order to enlarge publication, as he had previously given a peremptory undertaking to the defendants not to apply for a further enlargement, the time for passing publication having long since expired, and having been frequently extended. The present motion was to dismiss the whole of the above order, and had been put into the Lord Chancellor's paper for the previous seal day, (April 22,) but in consequence of an intimation of his lordship's wish not to take any motions on that day, except such as were very pressing, the parties had consented that it should stand over, without prejudice.

Mr. Bazalgette, also for the motion, cited *Grane v. Cooper*, 4 Myl. & Cr. 263, with respect to the production of the books, &c., which it would be highly inconvenient to deposit in the present case; and as to enlarging publication in the face of an undertaking to the contrary, he referred to the conditional order, No. 119, of the General Orders of May, 1845. It was true that publication had passed before this motion could have been heard, but the depositions taken during the last enlarged period might be suppressed, as if it had not been for such order to enlarge, the defendant might have set down the cause for hearing under the 116th of the new orders.

Mr. K. Parker and Mr. Hetherington supported the Vice-Chancellor's order, as being an usual order.

The Lord Chancellor. It is not the usual order to deposit documents, &c. with the record and writ clerks, but to produce them before the examiner, and also to the court at the hearing of the cause; besides, you cannot have what you do not ask for. I shall not make any order in respect of the order to enlarge publication. The time has elapsed, and publication has passed; it is therefore idle to come here for such a purpose.

Mr. K. Parker submitted, that the plaintiff would have been entitled to the deposit and production of the documents by the ordinary practice of the court; but from some slip, the notice of motion in this case did not extend so far. The court had, however, ordered the deposit, and therefore he asked for his costs.

The Lord Chancellor said, he must discharge so much of the order as directed the deposit of the documents, &c. with the record and writ clerks, as otherwise it might be converted into a precedent, that the order to produce them before the examiner would also include the deposit of them with the proper officer of the court; a practice which would be quite new to his lordship. The order having been varied, the costs could not be given to the plaintiff.

## Rolls Court.

*Sprye v. Reynell.* June 3, 1847.

MOTION TO DISMISS—114TH ORDER OF 1845

*The right of the defendant to move to dismiss under the 114th Order of 1845, within four weeks after his answer, or the last of his answers, if more than one, is deemed sufficient, as laid down in Dalton v. Hayter, is not affected by the decision of the Lord Chancellor in Arnold v. Arnold.*

*Principle of the distinction adopted at the Rolls on motions relating to orders of course obtained there, between irregularity and impropriety of practice.*

In this cause, which was a cross suit, Mr. Shapter moved to dismiss the bill for want of prosecution on the part of one of the defendants, whose answer was filed on the 25th of February last. It appeared that there was no answer outstanding, and the last answer on the file was filed on the 2nd of June.

Mr. Kindersley, contra, admitted that the four weeks dating from the time when the answer of the defendant moving was deemed to be sufficient, on the expiration of which, according to the decision in *Dalton v. Hayter*, 7 Bea. 586, a defendant is entitled to move to dismiss, had expired; but submitted, that under the circumstances the plaintiff ought to be allowed further time; and also intimated that an impression prevailed of the Lord Chancellor having, in the recent case of *Arnold v. Arnold*, sup. p. 61; 10 Jur. 360, differed from the opinion expressed by his lordship, and that, according to the decision of the Lord Chancellor in that case, the time from which the four weeks was to be calculated, was the date of filing the last answer on the file.

Lord Langdale said, that was not the case. Every defendant had a right to move upon his own answer, but it did not follow, that because he had a right to move the bill should be dismissed. The plaintiff might have a right to apply for further time. With respect to the supposed difference of opinion between himself and the Lord Chancellor in the case of *Arnold v. Arnold*, the supposition was quite erroneous, but if the impression existed, it was better that it should be removed. In *Dalton v. Hayter*, it was argued before him that the words "the last of the answers," in the 114th Order, meant the last answer on the file; he decided that this was not the meaning of those words, that they meant the last answer of the defendant moving to dismiss. Then came the case of *Foreman v. Gray*, (vol. 33, p. 486, 9 Bea. 200,) where a motion was made to discharge an order to amend for irregularity. He decided that it was not irregular, but afterwards, on the motion being renewed upon the ground of the order being in fact a fraud upon the court, discharged the order; a course which he was able to adopt in that case, because the cause was attached to his branch of the court. Then came *Arnold v. Arnold*, (vol. 33, p. 566; 9 Bea. 206,) where the motion was again made on the ground of

irregularity, and he again held that the order was regular. Then the motion was renewed before the Lord Chancellor, who directed the notice to be amended, by striking out the application to discharge the order for irregularity and moving upon the merits, which the Lord Chancellor had the jurisdiction to entertain, though he had not, as the cause was before the Vice-Chancellor Wigram. His lordship then referred to the distinction, which will be found stated in *Foreman v. Grey*, (vol. 33, p. 566,) between the course pursued at the Rolls in respect to orders obtained there as of course, in causes before some other branch of the court, and orders so obtained in causes attached to the Rolls Court; and observed, that if he were to discharge orders of course obtained at the Rolls in causes attached to other branches of the court upon any other ground than strict irregularity, he should draw into the Rolls Court questions connected with the merits of all the causes in which orders of course had been obtained at the Rolls, although they were before other judges of the court. In the case of *Arnold v. Arnold*, he was quite sure that the Lord Chancellor did not differ from him, for it so happened that his lordship met him immediately after he had made his decision, and told him what he had done.

[*Note by the Reporter.*—There appears to have been some perplexity caused by not distinguishing the questions directly involved in the decision in *Arnold v. Arnold*, from a question not decided, nor capable of being decided in it, but as to which it is inferred from the Lord Chancellor's decision in that case, that he would differ from the Master of the Rolls if it was brought before him. The questions in *Arnold v. Arnold* were two; that referred to by Lord Langdale above, relating to the course adopted at the Rolls upon motions to discharge orders of course; 2nd, the question of the construction to be put upon the words "the last answer;" in the 33rd section of the 16th Order and the last of several answers in the 66th Order of 1845, which both the Lord Chancellor and Lord Langdale held to mean *the answer of the last of several defendants*. The question in which it is supposed that the Lord Chancellor would differ from the Master of the Rolls if it came before him, is the construction to be put upon the similar words, "the last of the answers" in the 114th Order giving the right to dismiss, which Lord Langdale, in *Dalton v. Hayter*, held to mean *the last answer of the defendant moving to dismiss*, though there might be other defendants whose answers were still outstanding. It seems to have been assumed, that the Lord Chancellor would put the same construction on these words as he has put upon the similar word in the 33rd section of the 16th and the 66th Order, and therefore, in construing the 114th Order, would differ from the Master of the Rolls, an assumption which appears to the writer to be somewhat hastily made.]

### Vice-Chancellor of England.

*Exeter and Crediton Railway v. Buller.* May 25, 1847.

#### NOTICE OF MOTION.—COSTS.

*In a hostile suit between the directors of a railway company: Held, that the solicitor of a company would be liable for the costs of an interlocutory application, in case it should appear that he had acted without the authority of the company.*

A BILL was filed in this case by three directors of the Exeter and Crediton Railway Company against the remaining seven, and in April last an injunction was granted to restrain the defendants from working and leasing the said railway, and from forming any junction with the Bristol and Exeter Company, or any other company working upon the broad gauge.

Mr. Rolt and Mr. Follett now moved, on behalf of the defendants, that the bill might be taken off the file, and the suit dismissed, on the ground that it was instituted in the name of the Exeter and Crediton Railway Company without due authority. The notice of motion purported to be on behalf of the company, and was signed by the solicitor of the company.

Mr. Bethell, for the plaintiffs, objected to the notice on the ground that in case of the motion being refused, there was no one who could be made liable for costs. He claimed to appear on behalf of the company, and if his honour refused the application with costs, the order made would be that the company should pay the costs of the motion refused in favour of the company.

The Vice-Chancellor overruled the objection, and said that if it should turn out that the solicitor had, in instituting these proceedings, acted without the authority of the company, the court would make him pay the costs.

### Vice-Chancellor Knight Bruce.

*Blagrove v. Blagrove.* April 21st and 22nd, 1847.

#### PRACTICE.—RECEPTION OF EVIDENCE.

*A tenant for life in remainder filed a bill against a tenant for life in possession, and a tenant in tail in remainder also filed a bill against the same party, and evidence was taken in each suit, the defendant not consenting that the evidence in one cause should be read in the other. The court refused to allow that course to be taken, there being no proof that the witnesses were dead or incapable of being examined.*

THE defendant's counsel, Mr. Wigram and Mr. Craig, in these cases, applied that one of the suits should be ordered to be stayed until the report by the master on the other.

Mr. Russell and Mr. Glasse, counsel for the plaintiffs, would agree to this if the defendant

would consent; but the evidence in both suits should be read in that cause which should be allowed to go on. The defendants declined this. The following cases were cited: *Nevil v. Johnson*, 2 Vern. 447; *Burston v. Palmer*, Prec. in Ch. 233; *Daniel's Chancery Practice*, vol. i. p. 832, second edition; *Currington v. Cornock*, 2 Sim. 567; *Byrne v. Frere*, 2 Moll. 157; and *City of London v. Perkins*, 3 B. P. C. 602.

Mr. Lloyd appeared for another defendant. Vice-Chancellor Bruce. Were the point before me substantially a point decided by the House of Lords in *The City of London v. Perkins*, or any other, of course there would be no room for argument. I must necessarily decide according to that case. Subject to that question, as to the decision of the House of Lords, I am not aware that the point is governed by decision. In the case in the House of Lords the question arose upon a custom; the parties there were substantially the same. The question was, as I understand it, between the city of London and the public, and although the different individuals may have been before the court in each case, yet the parties were substantially the same. There are other cases in which the same observation may apply. The case here stands thus: There is a tenant for life in possession of an estate, subject to a series of limitations under a particular will, and he is also a tenant for life of certain personalty which stands settled upon a corresponding series of limitations. The tenant for life happens to be the trustee as to the real estate; he is not the trustee as to the personal estate settled. Two suits are instituted against him under the will in respect of alleged mismanagement, alleged improper treatment of the real and personal estate, of both of which he is tenant for life, and of one portion of which he is also a trustee. One of these suits is instituted by the person who is next tenant for life, subject to the contingency of the tenant for life not having issue: the other suit is instituted by the first tenant in tail in existence, who comes behind or after the reversionary tenant for life and tenant for life in remainder, who has instituted the other suit which I have mentioned. The evidence which is the subject of the present discussion has been taken in the suit in which the next tenant for life in remainder is the plaintiff, as I understand the matter. The question is, whether, without proof, and without suggestion, either that the witness thus examined is dead, or is, or has been, unable to be examined, shall be examined in, and therefore for, the purposes of the suit in which the first tenant in tail is plaintiff. I am of opinion that I am not required by authority, and I ought not in point of principle, to allow the evidence to be so read.

#### Queen's Bench.

(Before the Four Judges.)

*Pickford v. Lacon*. Hilary Term, 1847.

ASSUMPSIT.—WORK AND LABOUR.

A. contracts with B., a coach proprietor, for

three seats in a coach from Y. to L., namely two inside and one outside. When the coach had proceeded about half the journey, B. takes up more passengers than he was licensed to carry, whereupon A. and the other person inside leave the coach, and the passenger outside, not then being able to obtain the luggage, goes on to the end of the journey.

Held, that B. was not entitled to recover from A. the sum agreed to be paid for the seats, nor was he entitled to recover anything under the *indebitatus* count for work actually performed.

THIS was an action brought by the plaintiff, a coach proprietor, against the defendant for the sum of 4l. 4s., being the sum alleged to be due for three seats in a coach from Yarmouth to London, two inside and one outside. The declaration contained two counts, one setting out that the plaintiff reserved for the defendant certain places in the coach, and averred that he was ready and willing to carry him; the other was for work and labour. The defendant pleaded—1. *Non assumpsit*. 2. That the plaintiff did not reserve and secure to the defendant the said seats, nor was he ready and willing to convey him as in the declaration alleged. The jury found a verdict for the plaintiff on the first, and for the defendant on the second issue. It appeared that the defendant took three places in the coach, one for himself, one for his wife, and one for his servant outside. The coachman having taken up more passengers than he was licensed to carry, the defendant and his wife, after travelling about half the journey, left the coach and took a chaise, the servant not being able to obtain the luggage from the coach went on to the end of the journey. The defendant when he took the places paid 1l., and the fare for one outside place was one guinea.

Mr. Watson, in Michaelmas Term last, moved for a rule to show cause why a verdict should not be entered for the plaintiff for the sum of 3l. 4s. on the first count, or why a verdict should not be entered for the plaintiff on the *indebitatus* count, with one shilling damages.

The court refused the rule on the first point, being of opinion that the reservation of seats mentioned in the declaration meant that the plaintiff reserved for the defendant three of the lawful seats in the coach, namely, two out of the four inside, and one out of the thirteen outside, and that inasmuch as the plaintiff had taken up a larger number of passengers than he was licensed to carry, that the defendant had a right to rescind the contract and leave the coach.

Mr. Crowder and Mr. M. Smith now showed cause against the rule for entering a verdict on the second count, with 1s. damages. They contended that the contract was entire to carry the three persons the whole journey, and as that contract was broken by the plaintiff, he was not entitled to recover any portion of the sum agreed to be paid. The person outside was in fact prevented by the plaintiff from leaving the

coach, and although that person was taken to the end of the journey, yet that will not justify the court in entering a verdict for the difference between the fare and the sum paid.

Mr. Archbold contra. The defendant has derived a partial benefit from the labour of the plaintiff sufficient to raise an implied *assumpsit*.  
Per Curiam. Rule discharged.

### Common Pleas.

Pinney v. Richardson. Easter Term, 1847.

ENTERING AN APPEARANCE. — RETURN OF NULLA BONA, &c., TO A DISTINGAS. — SUFFICIENCY OF AFFIDAVIT.

*The affidavit in support of a motion for leave to enter an appearance after the return of nulla bona and non est inventus to a writ of distingas, should show distinctly that everything had been done to find some goods of the defendant.*

Power, on behalf of the plaintiff, moved for leave to enter an appearance for the defendant after a return by the sheriff of *nulla bona* and *non est inventus* to a writ of *distingas*. The affidavit on which he moved was that of the sheriff's officer, and it stated that the deponent went with the writ of *distingas* to the residence of the defendant on the 20th, 22nd, and 23rd days of January, and that on each occasion he saw a female whom he informed of the nature of his business; that she in reply each time informed him that the defendant was not at home, and that she did not know when he would be, and on the first occasion added that she was keeping the shop that the defendant formerly occupied.

By the Court The affidavit is not sufficient. It is by no means stated with sufficient clearness that the goods on the premises were not the defendant's. The woman says she is keeping the shop, but she is not asked whose the goods were. The officer ought at least to state that he did his utmost to find some goods of the defendant, and that he could not.

Motion refused.

### CHANCERY SITTINGS.

AT LINCOLN'S INN.

Lord Chancellor.

Trinity Term, 1847.

Saturday . June 19	{ The 1st Seal—Appeal Motions and Appeals.
Monday . . . . 21	{ Appeals.
Tuesday . . . . 22	
Wednesday . . . 23	
Thursday . . . . 24	
Friday . . . . . 25	{ (Petition-day) unopposed Petitions and Appeals.
Saturday . . . . 26	{ Appeals.
Monday . . . . . 28	
Tuesday . . . . 29	
Wednesday . . . 30	
Thursday . July 1	

Friday . . . . . 2	{ (Petition-day) unopposed Petitions and Appeals.
Saturday . . . . 3	{ The 2d Seal—Appeal Motions and Appeals.
Monday . . . . . 5	{ Appeals.
Tuesday . . . . 6	
Wednesday . . . 7	
Thursday . . . . 8	
Friday . . . . . 9	{ (Petition-day) unopposed Petitions and Appeals.
Saturday . . . . 10	{ Appeals.
Monday . . . . . 12	
Tuesday . . . . 13	
Wednesday . . . 14	
Thursday . . . . 15	{ (Petition - day,) unopposed Petitions, and Appeals.
Friday . . . . . 16	
Saturday . . . . 17	
Monday . . . . . 19	
Tuesday . . . . 20	{ Appeals.
Wednesday . . . 21	
Thursday . . . . 22	
Friday . . . . . 23	{ (Petition-day) unopposed Petitions and Appeals.
Saturday . . . . 24	{ Appeals.
Monday . . . . . 26	
Tuesday . . . . 27	
Wednesday . . . 28	
Thursday . . . . 29	{ The 4th Seal—Appeal Motions and Appeals.
Friday . . . . . 30	{ The General Petition-day.

N. B.—Such days as his Lordship is occupied in the House of Lords excepted.

### Master of the Rolls.

AT THE ROLLS.

Saturday . June 19 Motions.

AT THE JUDICIAL COMMITTEE.

Monday . . . . . 21	{
Tuesday . . . . 22	
Wednesday . . . 23	
Thursday . . . . 24	
Friday . . . . . 25	
Saturday . . . . 26	
Monday . . . . . 28	
Tuesday . . . . 29	
Wednesday . . . 30	
Thursday . July 1	
Friday . . . . . 2	

AT THE ROLLS.

Saturday . . . . 3	Motions.
Monday . . . . . 5	{
Tuesday . . . . 6	
Wednesday . . . 7	
Thursday . . . . 8	
Friday . . . . . 9	
Saturday . . . . 10	
Monday . . . . . 12	
Tuesday . . . . 13	
Wednesday . . . 14	
Thursday . . . . 15	
Friday . . . . . 16	
Saturday . . . . 17	Motions.

Pleas, Demurrers, Cases, Further Directions and Exceptions.

Monday . . . . .	19	
Tuesday . . . . .	20	
Wednesday . . . . .	21	
Thursday . . . . .	22	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Friday . . . . .	23	
Saturday . . . . .	24	
Monday . . . . .	25	
Tuesday . . . . .	26	
Wednesday . . . . .	27	
Thursday . . . . .	28	
Friday . . . . .	29	Motions.
	30	Petitions in the General Paper.

Unopposed Petitions, and Consent and Short Causes, on Saturday the 19th June, at three o'clock; on Monday, the 5th July; Saturday the 10th July; Friday, the 16th July; and Saturday, the 24th July; each day at the Sitting of the Court.

**Vice-Chancellor of England.**

Saturday . . . . .	June 19	The 1st Seal—Motions.
Monday . . . . .	21	Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Tuesday . . . . .	22	
Wednesday . . . . .	23	
Thursday . . . . .	24	
Friday . . . . .	25	(Petition - day,) Petitions, (unopposed first,) Short Causes, and Causes.
Saturday . . . . .	26	
Monday . . . . .	28	Pleas, Demurrers, Excep- tions, Causes, and Fur. Dirs.
Tuesday . . . . .	29	
Wednesday . . . . .	30	
Thursday . . . . .	July 1	
Friday . . . . .	2	(Petition - day,) Petitions, (unopposed first,) Short Causes, and Causes.
Saturday . . . . .	3	The 2nd Seal—Motions.
Monday . . . . .	5	Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Tuesday . . . . .	6	
Wednesday . . . . .	7	
Thursday . . . . .	8	
Friday . . . . .	9	(Petition-day,) Petitions, (unopposed first,) Short Causes, and Causes.
Saturday . . . . .	10	
Monday . . . . .	12	Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Tuesday . . . . .	13	
Wednesday . . . . .	14	
Thursday . . . . .	15	
Friday . . . . .	16	(Petition - day) Petitions, (unopposed first,) Short Causes and Causes.
Saturday . . . . .	17	The 3rd Seal—Motions.
Monday . . . . .	19	Pleas, Demurrers, Excep- tions, Causes, and Fur. Dirs.
Tuesday . . . . .	20	
Wednesday . . . . .	21	
Thursday . . . . .	22	
Friday . . . . .	23	(Petition - day) Petitions, (unopposed first,) Short Causes and Causes.
Saturday . . . . .	24	
Monday . . . . .	26	Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Tuesday . . . . .	27	
Wednesday . . . . .	28	
Thursday . . . . .	29	
Friday . . . . .	30	The 4th Seal—Motions. (The General Petition-day) Short Causes, Petitions (unopposed first.)

**Vice-Chancellor Wright Bruce.**

Saturday . . . . .	June 19	The 1st Seal—Motions and Causes.
Monday . . . . .	21	Bankrupt Petitions and Causes.
Tuesday . . . . .	22	Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Wednesday . . . . .	23	Bankrupt Petitions and Ditto.
Thursday . . . . .	24	Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Friday . . . . .	25	(Petition-day) Petitions and Ditto.
Saturday . . . . .	26	Short Causes and Causes.
Monday . . . . .	28	Bankrupt Petitions and Causes
Tuesday . . . . .	29	Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Wednesday . . . . .	30	Bankrupt Petitions and Ditto.
Thursday . . . . .	July 1	Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Friday . . . . .	2	(Petition-day) Petitions and Ditto.
Saturday . . . . .	3	The 2nd Seal—Motions and Short Causes.
Monday . . . . .	5	Bankrupt Petitions and Causes.
Tuesday . . . . .	6	Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Wednesday . . . . .	7	Bankrupt Petitions and Ditto.
Thursday . . . . .	8	Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Friday . . . . .	9	(Petition-day) Petitions and Ditto.
Saturday . . . . .	10	Short Causes and Causes.
Monday . . . . .	12	Bankrupt Petitions and Causes.
Tuesday . . . . .	13	Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Wednesday . . . . .	14	Bankrupt Petitions and Ditto.
Thursday . . . . .	15	Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Friday . . . . .	16	(Petition-day) Petitions and Ditto.
Saturday . . . . .	17	The 3rd Seal—Motions and Short Causes.
Monday . . . . .	19	Bankrupt Petitions and Causes.
Tuesday . . . . .	20	Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Wednesday . . . . .	21	Bankrupt Petitions and Ditto.
Thursday . . . . .	22	Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Friday . . . . .	23	(Petition-day) Petitions, and Ditto.
Saturday . . . . .	24	Short Causes and causes.

Monday . . . 26	{ Bankrupt Petitions, and Causes.
Tuesday . . . 27	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . . 28	{ Bankrupt Petitions and Ditto.
Thursday . . . 29	{ The 4th Seal—Motions and Causes.
Friday . . . 30	{ (Gen. Petition-day) Petitions.

## Vice-Chancellor's Sittings.

Saturday . June 19	{ The 1st Seal—Motions and Causes.
Monday . . . 21	
Tuesday . . . 22	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . . 23	
Thursday . . . 24	
Friday . . . 25	
Saturday . . . 26	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . 28	
Tuesday . . . 29	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . . 30	
Thursday . July 1	
Friday . . . . 2	{ (Petition-day) Short Causes, Petitions, (unoppd. first), and Causes.
Saturday . . . . 3	{ The 2nd Seal—Motions and Causes.
Monday . . . . 5	
Tuesday . . . . 6	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . . . 7	
Thursday . . . . 8	
Friday . . . . 9	
Saturday . . . 10	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . . 12	
Tuesday . . . . 13	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . . . 14	
Thursday . . . . 15	
Friday . . . . 16	{ (Petition-day) Short Causes, Petitions, (unoppd. first), and Causes.
Saturday . . . 17	{ The 3rd Seal—Motions and Causes.
Monday . . . . 19	
Tuesday . . . . 20	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . . . 21	
Thursday . . . . 22	
Friday . . . . 23	
Saturday . . . 24	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . . 26	
Tuesday . . . . 27	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . . . 28	
Thursday . . . . 29	{ The 4th Seal—Motions and Causes.
Friday . . . . 30	{ (Petition-day) Short Causes, Petitions, (unopposed first,) and Causes.

## BUSINESS OF THE COURTS.

## Common Pleas.

This Court will, on Saturday the 3rd day of July next, hold a sitting, and will proceed to give judgment in certain of the matters standing over for the consideration of the court.

## PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

## House of Lords.

## NEW BILLS IN PROGRESS.

Consolidation and Amendment of the Law of Bankruptcy. For 2nd reading. The Lord Chancellor.

Debtor and Creditor. For 2nd reading. The Lord Chancellor.

Repeal of Insolvency Jurisdiction of Courts of Bankruptcy, Abolishing Court of Review, and Reducing Number of Commissioners. (No. 2.) Lord Brougham.

Threatening Letters. For 2nd reading. Lord Denman.

Clergy Offences. In Committee.

Abolition of one of the Masters' Offices in Chancery.

Abolition of the Public Office in Chancery.

## House of Commons.

## NEW BILLS IN PROGRESS.

City Small Debts Court. Passed.

Law of Railways. Mr. Strutt.

For the Speedy Trial and Punishment of Juvenile Offenders. In Committee. Sir John Pakington.

Lunatic Asylums Regulation. Att.-General.

Inclosure Act Amendment. Sir F. Thesiger.

Health of Towns. Lord Morpeth.

Towns Improvement Clauses.

Taxation of Costs on Private Bills. To be reported. Mr. Hume.

Registration of Voters. For 2nd reading. Mr. Walpole.

Highways. Sir Geo. Grey.

Administration of the Poor Laws. Sir Geo. Grey.

Copyhold Commission Continuance.

Turnpike Acts Continuance.

Loan Societies Continuance.

Ecclesiastical Courts. Mr. Bouverie.

## THE EDITOR'S LETTER BOX.

Our correspondent at Bristol will find that the objectionable decision of the County Court there, relating to the splitting of demands, has been already noticed: see pp. 126, 138, *ante*. The general opinion of the profession is, that such decision cannot be maintained. We shall be glad to hear from "Bristolensis" on the other points to which he adverts.

The letters of J.T. and X. shall receive early attention.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JUNE 26, 1847.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

### ALTERATIONS IN THE JURISDICTION IN BANKRUPTCY AND INSOLVENCY

WE have not had the good fortune to meet any person who suggests that any *public* benefit will be derived from the provisions of the bill so unexpectedly brought into parliament, and so industriously, not to say precipitately, endeavoured to be hurried through both houses, for abolishing the Court of Review, and altering the jurisdiction in bankruptcy and insolvency.\* The Court of Review is to be abolished, but the functions now discharged by Vice-Chancellor Knight Bruce are to be in future discharged either by the same learned judge, or one of the other Vice-Chancellors, upon the appointment of the Lord Chancellor. The law creating the business of the Court of Review is to remain untouched, and, practically, the business is to be transacted by the same judge, the whole difference being, that instead of being nominated Chief Judge under an act of parliament, he is to be appointed by a special order made by the Lord Chancellor.

The jurisdiction conferred on the Commissioners of Bankruptcy, under the statutes 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, and exercised by them since August, 1842, is to be transferred, as regards town insolvents, to the Commissioners of the Court for the Relief of Insolvent Debtors; and as regards country petitioners, to the judges of the New County Courts. The law under which

this jurisdiction has been exercised, and which has occasioned constant and well-founded complaint, remains unamended: the whole change proposed is, that it should hereafter be administered, not by judges familiar with its enactments, and who have for years struggled to do justice in despite of its imperfect, contradictory, and absurd provisions, but by judges habituated, like the Commissioners of the Insolvent Court, to the administration of a different system of law; or else by judges, like those of the County Courts, who have had a very slight experience in administering any system of law, and no practical knowledge whatever of the law relating to bankrupts or insolvents.

Simply transferring the duties performed\* by one class of functionaries to another, the bill before parliament might suggest, that those who are about to be deprived of jurisdiction are unable or unwilling to continue to discharge the duties imposed on them by the legislature. Facts, however, negative such an inference. Sir Knight Bruce cannot bestow greater care and attention on bankruptcy business as Vice-Chancellor than he did as judge of the Court of Review, and we have never heard of his Honour complaining that the accession of business created by the Court of Review was too burthensome. Then, as to the Commissioners of Bankruptcy, if they are qualified for their duties as Bankrupt Commissioners, which has not been doubted, they cannot be incompetent to administer the law as regards insolvents. It is impossible to suppose the Bankrupt Commissioners could have complained they are over-worked. It is notorious that they

\* See an abstract of the bill, ante, p. 172.



do not sit above three out of the six working days in every week, and are not then engaged, upon the average, for above four hours *per diem*. Moreover, it is to be remembered that the Bankrupt Commissioners, under the 1 & 2 Vict. c. 46, s. 50, had salaries not exceeding 1,500*l.* *per annum*, and in consideration, we presume, of the increased duties which devolved upon them, under the "Act for the Relief of Insolvent Debtors," by the stat. 5 & 6 Vict. c. 122, s. 76, their salaries were augmented to 2,000*l.* *per annum*. The salaries of the Bankrupt Commissioners will not be curtailed to the amount of a single shilling by the proposed measure. Will their services be rendered more or less valuable to the public? We have lying before us "Hearn's List of Bankrupt and Insolvent Sitings," for the week ending Saturday, June 19, 1847, a useful publication, which is professedly published "Under the Patronage of Her Majesty's Commissioners in Bankruptcy." Upon referring to this list, we find, that in the week to which it relates, there were 158 meetings at Basinghall Street, and 97 of those meetings arose out of insolvent cases, and the remaining 61 in bankruptcy cases. Assuming that this week affords a fair specimen of the relative amount of business transacted in Basinghall Street in bankruptcy and insolvency, when the measure now under consideration becomes law, the Commissioners in Bankruptcy will receive the same remuneration they now enjoy, whilst they are relieved from more than one-half of the duties they perform. No provision is made in the printed copy of the bill under consideration, for additional compensation, to the Commissioners of the Court for the Relief of Insolvent Debtors, or to the judges of the County Courts, in respect of the additional burthen sought to be imposed upon them; but it is unreasonable to expect that such onerous duties should be performed without some equivalent, especially by the judges of the County Courts, who have no other remuneration than that which arises from fees receivable for the performance of judicial duties. The Commissioners and Registrars of the Court of Bankruptcy, however, are not the only officers whose condition will be bettered by having less work and the same pay under the new system. The Chief Registrar and Registrar of the Court of Review, Messrs. Ayrton and Vizard, hold their offices during good behaviour. No blame can be

imputed to them, if the legislature, in its wisdom, has thought fit to abolish the court of which they were appointed officers. Messrs. Ayrton and Vizard will continue, therefore, properly and justly, so far as they are concerned, to receive the same amount of salary for doing nothing which they now enjoy for performing the offices of Registrars of the Court of Review. In this instance, as in that of the Commissioners of Bankruptcy, the public are to continue to pay for services no longer to be performed by the parties entitled to receive payment; whilst additional duties are thrown upon functionaries for whose remuneration no provision is made.

The supposed benefit to the public is hypothetical, and at the utmost merely conventional. It is considered more convenient that bankrupts and insolvents cases should not be adjudicated upon by the same judges and under the same roof. It is therefore determined to transfer the town insolvency business to a court where a different system of insolvency law is, and has long been, in operation. The 1 & 2 Vict. c. 110, under which the Court for the Relief of Insolvent Debtors has acted during the last eight years, is never once alluded to in the bill before parliament. When this bill becomes law it will lead to the singular anomaly, that the Insolvent Court must administer two distinct, and in some respects contradictory systems, the one or the other being put in motion, not by the discretion of the court, but at the unrestricted option of the insolvent petitioner. It is obvious that such an arrangement can only produce irregularity, confusion and dissatisfaction. The whole proceeding, however, assumes a character of absurdity when it is recollected that the bill before parliament is founded on the report of a select committee, which sets out by stating, that the Bankrupt and Insolvent Law ought to be consolidated, and that it will be necessary to determine in the next session of parliament, whether one system should not be adopted for all cases of insolvency.<sup>b</sup> Until this important preliminary principle has been decided upon, no further alteration should take place in this branch of the law, and we do not yet despair that the suggestions of common sense in this respect will triumph over the passion for annual experiments.

We shall only add, that the bill before

<sup>b</sup> The report was printed in the last number of the Legal Observer, p. 161.

parliament is framed in such a manner as to effect a more extensive change in the administration of the law affecting bankrupts than those by whom it was introduced probably either intended or contemplated. By the 4th section, the jurisdiction of the Court of Bankruptcy, under the statutes 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, is transferred, without restriction, limitation, or reservation, to the Commissioners of the Insolvent Debtor's Court, and the judges of the County Courts. Now, it is under the stat. 7 & 8 Vict. c. 96, s. 41, that the Lord Chancellor is empowered to issue a fiat in bankruptcy against a trader upon his own petition, "and to authorise the prosecution thereof in the Court of Bankruptcy in London, or in any district Court of Bankruptcy;" and the court so authorised is empowered to make adjudication of bankruptcy under such fiat, and to prosecute all further proceedings, as if the fiat issued upon the petition of a creditor. When the jurisdiction of the Court of Bankruptcy under this act is transferred to other tribunals, therefore, it is more than doubtful whether a fiat on a trader's own petition could be lawfully prosecuted in the Court of Bankruptcy. A very considerable proportion of the fiats issued during the last two years have been issued under this section, and upon the trader's own petition. The effect of the proposed law, therefore, will be to abolish the jurisdiction of the Court of Bankruptcy in matters of insolvency, and to limit its jurisdiction in bankruptcy to cases where a fiat issues on the petition of a creditor. There are six town and twelve country Commissioners of Bankrupts; and when the bill before parliament passes, it is quite clear those learned gentlemen will have more abundant leisure than usually falls to the share of legal functionaries of any degree in this kingdom.

## HOUSE OF COMMONS COSTS' TAXATION.

THIS bill, with the amendments introduced by the select committee, provides for the appointment of a new and permanent officer styled, "Taxing Officer of the House of Commons," who is to tax the charges of all solicitors and *parliamentary agents* for such part of parliamentary business as is transacted in the House of Commons, notwithstanding that there is

already an existing tribunal,—the Taxing Masters of the Court of Chancery, which, under the provisions of the 6 & 7 Vict. c. 73, has jurisdiction to tax the whole of the bills of *all* solicitors practising in England and Wales, *including all business transacted in both houses of parliament.*

The bill contains a provision for an *appeal* from the taxing officer to the Speaker, which, to be effectual, must be heard in the same way as an appeal from the Taxing Masters of the Court of Chancery would be heard by that court. It is difficult to conceive any manner in which the Speaker's time could be more unprofitably employed. The time which questions upon costs occupy, even in those courts where, from their judicial habits and practical knowledge, and from the assistance derived from the counsel, solicitors, and officers attached to them, they are most readily discussed and disposed of, is well known to every one who practises there.

The act of 1843 not being touched by the bill, remains in full force for the taxation of all costs of solicitors in England and Wales, whether for parliamentary or other business, and consequently *a conflicting jurisdiction*, as to parliamentary costs, *will be created by the bill.* The Taxing Masters of the Court of Chancery will not be relieved from their duty of taxing the costs of parliamentary business of solicitors in England or Wales; nor will they be bound to refer that part of the bill to the Taxing Master of the house; and even if they adopted that course, questions might arise whether items for particular business allowed by the Taxing Masters in Chancery were not excluded from the other part of the costs by the operation of the Speaker's certificate.

It remains for the decision of the house whether there are sufficient grounds for the appointment of a new officer, and for withdrawing from the Taxing Masters of the Court of Chancery the duty which is now satisfactorily performed by them. Although the act of 1843 does not provide for the taxation of the costs of Scotch and Irish solicitors, and of parliamentary agents for business transacted in the house, yet the Taxing Masters have hitherto performed the duty under the appointment of the Speaker. The obvious course, therefore, appears to be, to extend the provisions of the act of 1843 to the taxation of the costs of the parties not now affected by that act, so that all such costs might be taxed by the Taxing Masters of the Court of Chancery,

whose long experience enables them to discharge the duty satisfactorily both to the public and the profession.

## DEATH OF ONE OF THE JUDGES OF THE COUNTY COURTS.

A VACANCY has already arisen, by the death of one of the recently appointed judges of the County Courts. Mr. David Leahy, who held the appointment of judge of the Lambeth and Greenwich district, died on Monday last, after a protracted illness, at his chambers, Mitre Court Buildings, Temple. He was called to the bar by the Society of Gray's Inn, on the 29th January, 1831, and joined the Western Circuit, but was not engaged extensively in practice either on circuit or in London. He was known for many years to have been connected with one of the morning newspapers, was an accomplished scholar, and possessed of considerable literary ability. Mr. Leahy's appointment to the judgeship of a County Court was understood to be an acknowledgment for services rendered by him, as a writer, to some one or more of the members of the present government, but it happened in this instance, as in many others, the reward was delayed until it could not be enjoyed. Mr. Leahy never took his seat as a judge of the Lambeth and Greenwich Court, the necessary duties having been performed since its opening by some of his professional friends, who sat for him and at his request. We have not heard that the vacancy has yet been filled up, but we doubt not there are a host of applicants.

## ABOLITION OF PUBLIC OFFICE IN CHANCERY.

It has been suggested that this bill should contain a clause to the following effect :—

That the Lord Chancellor or the Master of the Rolls should be empowered by order or commission, to authorize solicitors to administer oaths and affirmations, either in town or country, in all suits and proceedings in Equity, and matters of Bankruptcy or Lunacy, under such rules and regulations as shall be thought fit.

A similar clause was introduced into Lord Langdale's bill, for consolidating and amending the Law of Attorneys, and was retained during the three sessions in which that bill was before

parliament. It was ultimately expunged, we believe, on account of the difficulty of making compensation for the loss of fees. That difficulty seems now at an end, or might be provided for by the fees on commissions to swear affidavits.

The proposed change would be of great advantage to the public, who might then be sworn in any part of London at any time, instead of being obliged to attend in Chancery Lane at a limited, and to many a very inconvenient time.

# PARLIAMENTARY REPORT ON LEGAL EDUCATION.

**THE report commences with a review of the state of legal education at Oxford and Cambridge, where, as well as at Dublin, the means of improvement are the smallest imaginable. At King's College, London, under Professor Park, and at University College, under Professor Amos, many laudable efforts were made to establish a better system, but the classes in attendance were never numerous.**

The committee having examined into the provision made by the universities and colleges for the legal education of the unprofessional and professional classes, next directed their inquiries to institutions more specifically designed for the special education of the professional man, whether barrister or solicitor; and, in the first instance, to those intended for the instruction of the barrister, or to the "Inns of Court."

“The English Inns of Court are believed to have originated from the preference given by the universities to the study of the civil law, as connected with the canon law, and the growing desire to cultivate the common law, which exhibited itself in consequence. The professors or teachers of the common law left the university, and founded establishments in London, somewhere about the time of Hen. 3. After the dissolution of the Knights Templars, their property was granted to the Knights of St. John of Jerusalem, and the Society of the Temple (which was formerly one society, though afterwards divided into two) were tenants of the house, which they held under those knights, and afterwards grantees of the crown. A little later followed the Societies of Lincoln's Inn, Gray's Inn, &c. These societies were not merely bodies for the protection of professional rights, but at one time in a great degree places of professional education. Remains of that character are still to be seen. Readers or lecturers were appointed, who made their readings and mootings.” “Anciently,” says Lord Campbell, “at the Inns of Court,

there were the means of acquiring information in jurisprudence; and before any candidate to practise at the bar was allowed to do so, his proficiency was tested. There were lectures given under the name of readings, in the Inns of Chancery and in the Inns of Court: there were mootings, at which questions were debated before the benchers, or superiors of the society, by the students, and there were exercises that were performed by the students from time to time, during their *curriculum*. The students were obliged to attend to the whole discipline of the house. They were obliged to attend the readings, and most probably the mootings: they appear to have undergone considerable examination. The reader at that time had great authority, and he of his own authority could call to the bar, if he thought particular students worthy of being called. The being called to the bar has sometimes been supposed to mean the being called to the bar of the courts. The being called to the bar properly means called to the bar of the house, and it used to be a regular form so to call to the bar. There was a bar put up in the library, and according to a form then in use, the parties who were thought to merit it were called to the bar. It was an act of the house. This course of study and discipline seems to have existed anterior to their obtaining grants to their respective houses, and not to have been interfered with by that circumstance. It is to be presumed that the several Inns had power to alter their course if they thought it required improvement; but they had a regular settled course, which seems to have been a good one; the readings and mootings; which Professor Starkie considers very proper modes of conveying legal instruction. The reader appears to have also had power to examine students; and the recommendation to the bar, which is probably the foundation now, at least one foundation, upon which the judges sometimes interfere with calls to the bar, may be perhaps considered a sort of certificate of having satisfactorily passed this examination. But this system did not long continue. 'About the end of the 17th century,' says Lord Campbell, 'those readings, mootings, and exercises fell gradually into disuse; but long before then the system had been declining, and Lord Bacon had lamented that there was not a better system of education in the Inns of Court, and had contemplated the foundation of a university in London, which was to be chiefly devoted to the acquisition of legal knowledge, and fitting men for public life. No steps, however, were taken in pursuance of this suggestion of Lord Bacon, and the chairs of Oxford and Cambridge did not at all supply the defect. Since then the whole has fallen into a mere matter of form: 'Since then,' says Lord Campbell, 'all that has been required has been, that the candidate to be called to the bar should be of fair character; that he should have been a certain number of years in the books of the society; that he should have kept a certain number of terms, by eating a certain number of dinners in the

hall each term, and have gone through the form of performing what are still called exercises, but which consist of a mere farce of a case being stated, and a debate on each side; but the parties being stopped by the time they have read three words of the case, or the argument on either side, the case and the argument being furnished to them by an officer of the society.' This statement is further borne out by Lord Brougham: 'There are the remains to be seen,' says the noble lord, 'of legal education having at one time been considered as an object with the societies, and of some knowledge of the law having been considered as necessary to entitle a person to his call to the bar. For example, the readers in the different Inns of Court were originally persons appointed by the societies to read lectures upon the law, but for many years past it has become perfectly obsolete. Another vestige which remains of legal education, or of legal qualification being required before a call to the bar, is to be found in what are called the 'Exercises,' which each student, before being called to the bar, is obliged to keep. Those are now reduced to the merest form: a paper is put into the hands of the student, containing a proposition in law; he maintains that the widow is entitled to her dower, for instance, in certain cases. This is a paper consisting of about seven or eight lines, put into his hand by the steward before he goes up to what is called 'keep his exercise;' he then comes before one of the benchers, and begins, and as soon as he has uttered the first words, 'I say that the widow shall have her dower,' the bencher bows, and the student retires, and he has kept 'his exercise.' Anything, therefore, more entirely nugatory, and more of a mockery, as a test of legal acquirements, cannot possibly be imagined; though it is certainly a remnant of a practice which in former times must have existed, of a real and actual examination.' This total absence of all provision for legal education in the Inns of Court, and the meagre amount, as already observed, provided in the universities, had the natural effect of throwing the student on such chance instruction or studies as might fall in his way. 'During the whole of the 18th century,' says Lord Campbell, 'it was left entirely to the students themselves to acquire a knowledge of their profession. In the early part of the century they went into attorneys' offices, and towards the middle of the century, and afterwards, there was a system established of going into the chambers of special pleaders and equity draftsmen and conveyancers, paying them a fee of 100 guineas a year, and assisting them in carrying on their business, and seeing how their business was to be transacted; and that, down to the present time, has been the only teaching for any of the branches of the profession of a barrister.' Lord Brougham, in still more detail, also limits English legal education to the same discipline.

"After stating that the examination held previous to being called to the bar in Scotland, is a little better than the English form, but

not much better for grounding the student in the knowledge of his profession,' and referring to the non-attendance of the Scotch law student on conveyancers, he proceeds: 'In England the case is different. Here, no one thinks of being called to the bar, either in the Court of Chancery, or in the courts of common law, or practising as a conveyancer, without having undergone very considerable discipline in the office of a draftsman, a pleader, or a conveyancer. Those who wish to be called to the bar, nominally, to have a kind of general title, when they go to reside in the country, do not do so; but all who ever think of following the profession for its emoluments or honours have, without any exception, been for many years past in the habit of attending under special pleaders, draftsmen, or conveyancers. The common term is at least a year, but hardly any are satisfied with so little. The ordinary course is two years; and whoever intends to practise himself either as a conveyancer, a draftsman, or a special pleader, must be two, if not three years under a master. I must observe, however, that in attending his master, the pupil is not taught by interposition of the pleader or draftsman; generally speaking he is left entirely to himself; he sees the precedents; he may copy them or not as he chooses; he sees cases brought to be answered by the pleader or draftsman, or conveyancer; he sees the answers, and he may obtain information by speaking to his master and discussing the subject; but, generally speaking, he is left very much to himself. When I was a pupil with Mr. Tindal, afterwards Chief Justice, I certainly benefited more with him than I otherwise should have done, from my intimacy with Mr. Tindal, which led me to discuss a great number of subjects with him; matters that were brought before him for his opinion, and to discuss points of pleading; and I was, like the other pupils, in the habit of drawing pleas under him. We also, each of us, copied what is called the 'Evidence Book,' which is a most useful work, compiled chiefly by the late Mr. Justice, afterwards Mr. Baron Bayley, upon the plan of Comyn's Digest. The copying over this book was of great use to me professionally afterwards, and it was a perfect compensation for the labour which it imposed. There was another book copied by others of the pupils, the Book of Actions, which was a similar book upon actions at law; and there was a third book, a Book of Pleading, copied by a few of the pupils. All those were framed upon the same system, namely, taking for a model the most admirable of all models of logical arrangement, and discussion of subjects, that of Comyn's Digest. But, generally speaking, I have only to repeat, that the pleader or the draftsman never lectures, and, generally speaking, does not actively instruct his pupils. It is otherwise, I believe, with conveyancers. I have known some pleaders, now at the bar, who do the same; but after a pleader has been called to the bar, his time is too much occupied to enable him so to do, especially if he has

a considerable number of pupils.' To this statement it is needless to add. The education thus acquired is in a great measure technical, and its acquisition must very much depend upon the individual intelligence and exertion of the pupil.

"The 'King's Inn,' in Dublin, does not contribute more to the legal education of the Irish bar than the English Inns of Court to that of the English. In many particulars, it lies, for all such purposes, under still greater disadvantages. The society appears to have been originally a voluntary one, though some have expressed doubts whether it was a corporation by prescription or not. A charter was at one time granted to it, which was afterwards repealed at the instance of the bar; they remonstrated (in a memorial, 24th January, 1793,) purporting to come from persons calling themselves members of the 'Utter' (*i. e.*, Outer) Bar; the charter was withdrawn with the consent of the society, and the act of parliament confirming the charter was also repealed. No attempts to incorporate the society have since been made, and in that state it stands at present. The benchers, either *ex officio* or elected in a great measure from those who fill special situations, were originally limited to the number of 45; in consequence of the statute ranking the Master of the Rolls as a judicial officer, he is now a bencher *ex officio*; the number is consequently 46. The distinction is in a great degree honorary; their principal duty consists in regulating the admission of students to the King's Inn, and subsequently to the bar, the admission of attorneys, and the young men whom the attorneys take as apprentices. Some faint indications may be met with up and down in later public documents, of an educational purpose; but they are far more vague than what may be found in the records of the English Inns of Court. It does not appear the society has ever had regular lectures, exercises, readings, mootings, or examinations, nor any trusts for endowment of professorships; the funds of the society are considerable, amounting to between 8,000*l.* and 9,000*l.* a year. No part of this has been, strictly speaking, applied at any time by the society to the promotion of education, except a sum of 400*l.* a few years ago granted to the law students (but which arose out of peculiar circumstances,) for the encouragement of lectures in the Law Institute of Dublin, a voluntary society to which we shall advert later. It is fair indeed to add, that large sums, from time to time, have been allocated to the formation and maintenance of the library, which is now very considerable, open to all barristers indifferently. No payments for admission are required, but students have not admission to it; it is confined to the members of the society, and students do not become so until they are admitted to the bar; it cannot therefore be considered as established for the purposes of the legal pupil, but for the convenience of the legal practitioner. A somewhat closer approximation to the recognition of a course of legal education may perhaps be dis-

covered in the memorial required from persons claiming to be admitted as attorneys or students, in which the candidate must state that he has a certain knowledge of the duties of an attorney, and that he has read certain books specified in his memorial; that is to say, he must specify in his memorial the having read certain Latin and Greek or classical authors; they (the benchers) do not prescribe what they are to be: but he is obliged to state that he has been so many years in a particular school, and that he has read the Greek and Latin authors so named. This is not required of the candidate applying to be admitted as a barrister; and though having graduated in a university is considered of sufficient importance as to be allowed to abridge the period otherwise prescribed to be passed in the King's Inn and the Inns of Court, it is not required as a condition, nor any certificate of attendance or qualification, in lieu thereof, from other colleges or schools, previous to admission to the King's Inn or to the bar. No examination is required for admission to either; the whole duty of the student is limited to attending terms in this Inn, and in the English Inns of Court; that is, of dining there a certain number of times during term, and for a certain number of terms; and compliance with that rule is sufficient, in addition to the certificate of general qualification, to determine the right of admission to the bar. Chief Remembrancer Lyle seems thus to have been fully warranted in saying, 'that in point of fact, there is no system of education whatever pursued in the King's Inn; and that as long as he had known anything of the society, and as far as he had been able to acquire any information from their different records, this had always been the case.' Nor is this deficiency supplied by any means commensurate to those which are usually adopted in England; that is, by attendance on special pleaders, equity draftsmen, or conveyancers. The state of the profession in Ireland does not admit of this subdivision of labour; few or no students, and scarcely any teachers, are to be found; if any look for such instruction, it is to England they generally recur for it, and not to Ireland."

## INCUMBERED ESTATES (IRELAND) BILL.

[From a Correspondent.]

LOANS to an enormous amount have been made on the security of first mortgages on Irish estates, the mortgagees relying on the known powers and rights which the law confers on the holders of such securities.

Trust money, authorized by the creator of the trust to be lent only on English security, has, under the authority of a recent act of parliament, (commonly called Lynch's Act,) and with the sanction of the Court of Chancery in England, been advanced to a very considerable amount on security of first mortgages in Ireland.

The known and recognized securities of a first mortgagee and those which are the main

inducements to capitalists to lend money on mortgages are—

- 1st.—That he has the legal estate of the property vested in him. The property cannot be sold or dealt with in any manner without his concurrence.
- 2nd.—He has the right to the exclusive possession of the title-deeds, and to hold them until his money be paid.
- 3rd.—He is entitled to enter into possession of the property and receipt of the rents.
- 4th.—Under the stipulations usually made in Irish loans, he has a receiver of the rents or a power of appointing one; and this is so important as to constitute almost an essential feature in Irish mortgages.

The present bill interferes with, and in a great degree defeats every one of these securities.

1st. Notwithstanding that the mortgagee has the legal estate, it is proposed that the estate may be sold and conveyed without his concurrence.

2nd. He is compellable in a proceeding originating with the owner or any incumbrancer on the estate to part with the title-deeds, and to lodge them in the office of a Master in Chancery in Ireland; and he is thus deprived of his right of recourse to any other estates included in his security in England or elsewhere, and to his personal remedies for recovery of his money.

3rd and 4th. His power of entry and receipt of rents and the receivership may be wholly taken away. The very estate itself may be sold and the purchaser will be entitled to the rents.

So great an innovation on the rights of existing creditors has probably never been made, and the details of the measure, into which we cannot at present enter, are as objectionable as the principle.

## INCORPORATED LAW SOCIETY.

THE annual general meeting of the members of this society was held at their Hall in Chancery Lane, on the 18th May, 1847. Edward Rowland Pickering, Esq., presided. The secretary read the report of the council, stating the principal subjects which had occupied their attention during the last year, and setting forth some of the results which have attended their exertions. The council, in the first place, advert to the

"Alterations in the law.—Notwithstanding," (they say,) "the extensive alterations in the law and the forms and modes of its administration, which have been carried into effect during the last sixteen years, some of them, it is to be feared, not very beneficial to the suitor, and often attended with perplexity and inconvenience to the practitioner, further projects of change in our judicial code continue to be brought before the legislature! During the



latter part of the last session, several measures of great importance to the community were under consideration of parliament, and several of them have passed into the statute book.

"Amongst the bills brought in, but not yet adopted as laws, were those for establishing a General Registry of Deeds,—for the enactment of a short Form for Conveyances, Wills, Settlements, and Leases,—for the constitution of a new Commission for inquiring into and managing Charitable Trusts, and for giving additional Remedies to Judgment Creditors. Other measures were introduced into one or other of the two houses, but they are of inferior importance.

"The council took these several bills into consideration, and against some of them they prepared and submitted reasons why they should not pass, or only with certain modifications. With regard to the bills which were brought in and have since passed, one of the most important was the bill relating to the recovery of debts under 20<sup>l</sup>.<sup>a</sup> This in its early stage was minutely examined, especially with regard to the proposed exclusion, except in a few cases, of the jurisdiction of the superior courts, and the entire, and, as the council thought, unjust exclusion of attorneys and solicitors from the office of local judge! Deputations from the society attended the proper authorities; many efforts were made by individual members of the council for the protection both of the suitor and solicitor, and finally, a petition under the seal of the society, against the bill, was presented to parliament. The council regret to add, what is indeed now sufficiently public, that their struggle against the measure was nearly altogether unavailing.

"The other bills which passed the legislature were the 9 & 10 Vict. c. 54, for extending to all Barristers the right of Practising in the Court of Common Pleas, and the 9 & 10 Vict. . 62, for abolishing Deodands, and c. 93, for compensating the Families of Persons killed by Accidents. The measures just enumerated were entitled to and received the approbation of all branches of the profession. The Act 9 & 10 Vict. c. 66, for amending the laws relating to the Removal of the Poor, originally contained a clause empowering boards of guardians to appoint officers for conducting proceedings relating to the removal of the poor, without providing that such officers should be duly qualified as attorneys or solicitors. The council addressed a remonstrance to the Secretary of State on this subject, and the clause was ultimately withdrawn. The act then passed without at least including any infringement on the legal rights of the profession.

"Other acts were passed of more or less interest to particular classes of legal practitioners; for example, the 9 Vict. c. 20, regulating the Deposits of Railway and other public Companies; the 9 & 10 Vict. c. 28, for facilitating the Dissolution of Railway Companies, and the

9 & 10 Vict. c. 106, for making preliminary inquiries on applications for Local Acts.

"In the present session of parliament the public distress which has pressed heavily upon a large part of the empire, has occupied so much of the attention of the legislature as to leave little opportunity for the discussion of projects of Law Reform, and accordingly few measures of that kind have been brought under its consideration. The General Registry Bill, the short Form Conveyances Bill, and that for the Transfer of Charitable Trusts from the Court of Chancery to a new Board of Commissioners, have not been urged forward. Lord Brougham, however, introduced a bill for abolishing the Court of Review, reducing the number of Commissioners of Bankrupt and Registrars, and repealing various other enactments of very recent date; but this bill was referred to a select committee, and the Lord Chancellor has since brought in a much more comprehensive measure for consolidating and amending the whole law of Bankruptcy. This bill, consisting of 319 sections, will receive the best attention of the council, as it will, no doubt, engage that of profession at large; but, looking at the great importance of the subject and its voluminous enactments, it can scarcely be expected to pass both houses in the present session. They have also under consideration the bill recently brought in relating to the Taxation of Costs in the House of Commons, which materially affects the practitioners in that class of business."

*Practice of Retainers.*—After these legislative measures, one of the next important subjects to which the attention of the council had been directed, was that of the practice with regard to retainers of barristers.

"The council had from time to time received various communications, complaining of the inconvenience and hardship to which the profession and the suitor were exposed from the unsettled state of the regulations which obtain with reference to fees in general, but especially as to fees payable for retainers in parliament and at the assizes. It is well known, indeed, that this practice has been long in an unsatisfactory condition; that it has given occasion to frequent differences as well between barristers and attorneys as among attorneys themselves, and although the subject was an extensive and difficult, and in some measure a delicate one, the time appeared to have arrived when the evil should be met, and, if possible, removed. The attention of the council has accordingly for some time past been earnestly directed to the establishment of some rules which might serve to exclude dispute, and enable the practitioner, at least in all ordinary cases, to regulate his proceedings on behalf of his client. The first measure taken by the council was to ascertain

<sup>a</sup> The council, since this report was made, have taken very active measures for rendering the bill as unobjectionable as possible.

the existing practice, so far as it was understood by the persons most conversant with it—the attorneys and solicitors in London. For this purpose (as the members of the society are aware), a series of questions was carefully prepared and circulated among them, and they were invited to furnish the council with the requisite information, to point out any inconvenience which they had experienced from the present practice, and to suggest means for its improvement. To those inquiries the council received numerous answers and much useful information, from which it appears that comparatively few points in the law of retainer are clearly settled and uniformly acted upon; that there are others which, although well known amongst practitioners and generally complied with, are still objectionable, because they are injurious to the suitors or inconvenient in practice; and there are also many which are so doubtful that solicitors differ upon them widely both in practice and opinion.

“From the materials which the council thus collected, assisted by their own professional experience, they have prepared a series of rules for the guidance of solicitors in retaining council, and the bar in accepting retainers; and these proposed rules they have submitted to all the Judges of the Superior Courts, to the Attorney and Solicitor-General, to the Serjeants-at-Law, and the Benchers of the several Inns of Court, in the confident belief that the council, on the part of this society, will receive from the bench and the bar that continuance and support in carrying out this important object, which can alone render the attempt successful.

*Metropolitan and Provincial Law Association.* The council next state that various communications have taken place between this society and the several provincial law societies.

“The council, in the latter part of last year, soon after the passing of the Small Debts Act, were requested to co-operate with those societies in adopting measures for the improvement of the profession, and the furtherance of its interests, by establishing a new association, composed of Provincial as well as Metropolitan solicitors.” Although the objects of that Association appeared to accord with many of the purposes for which this Society was founded, yet as they had proposed to extend their aims to others which, however valuable in themselves, were not contemplated by the charter, the council felt themselves compelled to decline the proposal. The council moreover entertained the opinion that, by holding a course strictly confined within the range of their chartered powers, they might be able more effectually to promote the interests of the association, and, through them, of the profession. The council are gratified in knowing that this view of their duty, and the decision to which it led, have met with the approbation of members of the profession distinguished for their long ex-

perience and sound judgment. In the meantime the “Metropolitan and Provincial Law Association” has been prosperously established; and, so far as this society can usefully and properly afford its co-operation, they will be always ready to assist their brethren in carrying out their important objects.”

*Complaints of Malpractice.*—The last twelve months have produced a considerable number of complaints of malpractice committed by attorneys and others, and information has also been received, that attorneys were practising without certificates.

“In the former class of cases an application was made to the Court of Queen’s Bench to strike the accused parties off the rolls for fraud; a rule *nisi* was granted, and the case was afterwards referred to one of the Masters, but as yet remains undecided.

“The interference of the society has also been required in cases where attorneys were charged either with negligence or delay in the business of their clients; but the council have not, after a strict examination of this class of complaints, deemed it their duty to take any steps in the name of the society.

“The council have also considered several complaints against unqualified persons acting as attorneys in preparing legal instruments, in appearing at police courts and before Magistrates, and otherwise acting contrary to the provisions of the Attorneys’ and Solicitors’ Act. They have generally met with considerable difficulty, as might be anticipated, in obtaining conclusive evidence to satisfy the requisitions of the statute, but have reason to believe that the vigilance exercised on the part of the society, and the increasing assistance which is received towards the suppression of illegal practice, have very materially diminished its extent.”

*Renewal of Certificates and Admission of Articled Clerks.*—The affidavits in support of applications for taking out or renewing certificates to practice after the lapse of a year from admission, or the expiration of former certificates, are, it is known, filed with the Lord Chief Justice, and are transmitted every term to this society.

“These have been, from time to time, considered by the council, and where any objections appeared to be well founded, they have been represented to the judges. In one instance where information was received that the attorney applying for re-admission had fraudulently misapplied his client’s money, counsel was instructed, on the part of the society, to bring the facts to the notice of the court, who referred the case to the Master, and the party has not thought it expedient to proceed with his application.

“In another and very recent case, the council were prepared to oppose the renewal of the annual certificate of an attorney who had been

\* See page 69, ante, where we have more fully stated this part of the report.



convicted and sentenced to twelve months' imprisonment in a house of correction, but such attorney having received notice of the intended opposition, deemed it expedient to withdraw his application.

The council have also used every means in their power to prevent the admission of improper persons into the profession. They have, each Term, sent the lists of applicants to all the country law societies, and have carefully considered all the circumstances with which they have become acquainted bearing on the mode of service, or the conduct of the clerks during their articles. In particular they have had their attention directed to that improper mode of service where the clerk and the attorney reside at different and distant places, and consequently the clerk is deprived of that personal superintendence of the master which the judges require in obedience to the provisions of the statute. The council trust that this irregular practice will be discontinued.

The report also details various other subjects to which the attention of the council has been directed, namely, the proposed removal of the courts;—the annual certificate duty;—the usages of the profession in conveyancing practice;—fees of office; &c. It is then stated that

"An occasion having presented itself of obtaining a further space of ground on the south side of the Hall, corresponding in extent with the former purchase on the north side; and the leasehold interest having just expired, the council deemed it expedient not to let slip an opportunity so peculiarly eligible, and have therefore entered into a contract for the purchase of the property. This additional site will enable the society to provide convenient offices for conducting the business of the examination and registration; to enlarge the library; to set apart a convenient portion of it for the use of articulated clerks, and generally to afford to the members at large additional rooms, and other means of enlarged accommodation, which the convenience of the society even now calls for, but which, by its increasing numbers, will, in a few years, be not merely an accommodation, but a necessity.

"The report also states, that the lectures have been attended during the past year by a larger number of students than in most former years; and the library has been resorted to by an increased number of articulated clerks. The council have made important additions to the books, and have opened a register, in which members may suggest, for the consideration of the council, the purchase of any publication, on matters connected with the laws of England or general jurisprudence."

The following gentlemen were re-elected members of the council:—

Messrs. William Loxham Farrer, John Irving Glennie, Alexander William Grant, John Swarbrick Gregory, George Herbert Kinderley, Germain Lavie, William Lowe, Edward Leigh

Pernberton, William Tooke, and Edward Archer Wilde, and Mr. Keith Barnes in lieu of Mr. Edward Smith Bigg, who has retired from the profession.<sup>4</sup>

Mr. Charles Ranken was elected *President*, Mr. Benjamin Austen *Vice-president* of the society, and Messrs. Henry Denton, Edwin Wilkins Field, and Bartle John Laurie Frere, *Auditors* of the accounts of the society.

A resolution was then passed for reducing the admission fee of country members of the society from 15*l.* to 10*l.*

And the cordial thanks of the meeting were presented to Mr. Pickering, the president, for his able conduct in the chair, and for his constant attention to the interests of the society.

## SECONDARY PUNISHMENT.

### EMPLOYMENT IN DEEP-SEA FISHERIES INSTEAD OF TRANSPORTATION.

THE great object of the criminal law being the punishment of the offender with a view to his improvement, and the example also thereby afforded to deter others from following the same bad career, I take leave to offer some suggestions on the subject as it regards transportation to a foreign country.

I am led to this by the statement contained in a petition presented by Lord Brougham, in February last, for the amendment of the criminal law. The statement, among other matters, went to show that 3,990 convicts per annum were sent to penal settlements, and that the cost of their transportation and keeping them and in the hulks amounted to half a million, while the expense of keeping the same number in prison for two years amounted to 300,000*l.* He said, also, that convicts feared imprisonment more than transportation. Imprisonment then is intended both for punishment and reformation, but what is a convict to do when he quits the prison? What indeed can he do under such hopeless circumstances but resort again to his former habits with perhaps more dexterity from his recent associations? The door of honest industry and labour for ever closed against him;—that leading to crime more widely opened. The great desideratum seems to be the reversal of this baneful course, and the endeavour to afford an opening for honesty and industry. This too would for ever close the door to renewed crime. From a noxious burthen the criminal becomes a contributor to the resources of his country. Without excepting to our criminal laws or their due administration, which are unparelleled abroad, I shall proceed to consider the subject of transportation as a punishment and mode of colonising a new country. It may be, and in many

<sup>4</sup> Under the new Charter, although gentlemen who have retired from the profession may be admitted or continue members of the society, the council must consist of attorneys and solicitors in actual practice.

cases no doubt is, a grievous punishment to the offender. In many, a much greater number probably, no punishment whatever. In all, however, it is a most expensive and comparatively unprofitable one to the country, above all it is objectionable on the ground of morality and religion. To people and commence a new settlement in a new and probably fertile country with the worst characters of the mother country seems to be in every respect and without any qualification impolitic. The constant accession also of such parties every year keeps up the pollution, so that the few colonists who are free settlers are continually surrounded and mixed up with an atmosphere of depravity and degradation, with no other counteracting advantage than that arising from the enforced labour of the convicts. The pestilence is ever present, ever increasing with each new importation of felons, so that the stream of population thus polluted at its source what can be expected from it but the most disastrous fruits? What can they be for perhaps ages to come but the most exceptionable of all communities? The leaven of such an inherently impure beginning is spread into all its habits and associations. There is really no exception even of the more regular, religious, and well-principled, but comparatively few free settlers. They cannot separate themselves from the disgusting mass, and cannot unfortunately do much to reform it, but are drawn into the surrounding vortex, and forced into familiarity with crime, and criminals always under their eyes, at their very doors, if not oftentimes within them. This certainly appears to be quite inevitable, and now we may count the cost of the annual transportation of vagabonds to keep up and so increase the penal colony. Does it not, by the way, become gradually less penal to the convicts and more intolerable to the free settlers. They almost change hands and characters, and thus make it less desirable for any one to make that a home where so many comforts are destroyed by so many and such increasing associates and annoyances. The cost is also in this impolitic mode of punishment nearly thrice as much as is that of imprisonment at home. In imprisonment at home, however, there is, for the time at least, a stop put to the criminal's proceedings: abroad, when transported, they carry the worst examples with them, and in such numbers as to become, perhaps, the greater portion of the population.

Imprisonment then affords a much better chance of reforming the offender, and if a course were opened to him for restoring him to better principles and practice at the same time, nothing could be more desirable. It will be seen that these remarks are only preliminary to such suggestions as on the best consideration of this important subject I have been able to offer, nor is it my desire to do more. I consider them practicable, and if reduced to practice, likely to effect more readily, easily, and the reformation of the offender than by either mode of transportation or imprison-

ment as they are at present conducted. The plan that appears to me best calculated to effect these objects combines the advantages of both; nay, if well conducted, that would in the end be attended with no loss, but a gain to the country in a pecuniary point of view. Instead of transportation then I would suggest that a similar banishment in the deep-sea fisheries of the Irish and English coasts should be substituted, and that imprisonment should be used in a different mode and for a more beneficial purpose in a curing establishment. Here all the fish caught and not needed for the market could be salted and barrelled for sale for the supply of any market at home or abroad. Taking 3,990 convicts per annum, or say 4,000 as the number to be so employed, and the present cost of 300,000*l.* on Lord Brougham's statement for keeping them in prison two years, that would be therefore 150,000*l.* annually at the present expenditure with, as I conjecture, little or no returns from the parties. The same sum thus spent in the purchase of effectual fishing boats for the deep seas would far more than accomplish the outlay for vessels, nets, and provisions for the year, the last only being annual. I shall venture on the following general estimate, open however to correction on going more minutely into them. Very exact accounts are not at present needed. Say then that 50,000*l.* or more shall be expended in the purchase of 100 or 150 vessels calculated expressly for the deep sea fishery and for that alone. Add 10,000*l.* more for all the accompaniments of the most substantial sort, which will not be again incurred to the same amount. Let us assume that each of such vessels will occupy twenty men as the crew; we shall thus have 2,000 or 3,000 located or transported in effect, and taken off the country, to be made at once useful to it and to themselves, this too without the danger of tainting with their corruption or ill example any other branches of the community. They will be as effectually transported to the seas as they had been before to the penal colonies. They will be at once deprived of the means and the motives for committing their former crimes, and they will consequently be immediately placed in a course of reclamation that cannot fail to be salutary, added to which is the prominent advantage of breaking up the mass of crime and criminals into small and comparatively innoxious bodies. The remaining half or fourth may be provided for on shore at the curing establishment as prisoners. We have still left 90,000*l.*, or thereabouts, to feed and clothe the convicts, which, I suppose, their occupation being the constant acquirement and preparation of food, will not much exceed the half of that sum. So much for the fisheries. And now let us turn to the curing establishment on shore. This would require a much smaller number, with whom however many persons would have to be employed at wages who are not convicts, but who would instruct them in the most approved modes of proceeding. This would consequently be an additional expense to the curing establishment, and to be provided

for accordingly. As we proceed, however, we must not overlook the means and expenses attending the proper control and direction of the convict crews. They must, as a matter of course and necessity, be so placed as to prevent their uniting or injuring the vessels' tackle or nets, &c., in any respect. This is indispensable, and hence arises the great practical difficulty of the scheme. Without going into minute particulars in every case, I shall confine the remarks that follow to the *modus operandi* merely by which the principles and practice of them shall be best secured and extended.

Having assumed the number of 20 convicts for each, of the 100 or 150 vessels to be employed, it may be said, and justly, what security is there for their being intrusted with the navigation of them and of the fisheries? What is to prevent their making off with the vessels, and thus evading their punishment, and the provisions thence arising to others withdrawn or withheld? I reply, nothing, unless we prepare to guard against such a contingency, nay, such an otherwise probable event. There are two obvious modes of effecting this, the one by limiting the provision for each vessel to so short a period as to render the attempt more difficult and hopeless; the other by such restrictions and superintendence as will equally, if not better effect, the same object.

If we make it the palpable interest of the convicts to conduct themselves well we have perhaps the strongest and most lasting hold upon them. If we make it by superintendence and regulations more difficult to go wrong, we do more, perhaps, with greater certainty. But as the plan becomes more extended from the annual supply of criminals, other means may be also applied to produce the same effects by a combination of the two modes pointed out. I do not intend to do more than throw out what seem to me practicable hints and suggestions, founded, however, on such principles of common sense and common interests as are not to be questioned. To reform the convicts no one will dispute is a great object and well worthy of the earnest attention of the legislature. To make him useful and profitable at the same time is equally desirable and equally effectual. To separate the masses of criminals into isolated and smaller bodies cannot fail more speedily to accomplish the object, and the sure returns such as to reward the government and give back the whole of the expenditure on this account. Let us now look again to the means for effecting such great and beneficial effects. One hundred vessels or more, of which 90 or 135 stationed at so many different places on the Irish coast for deep sea fishing, would occupy, as we have seen, the annual supply of two or three thousand convicts, and make provision for them in every respect. But it is also requisite to have carrying vessels for the purpose of taking the fish fresh caught to market or the curing establishment, as may be required. To superintend and take charge of 20 men in each vessel not less than 4 or 6 would probably be needed, and armed with sufficient powers to

keep under and always employed the other 20 in catching fish. What coercive means of prison discipline would be requisite will be best ascertained in reference to the proportion and measure in our prisons. There is here, however the great advantage in such a subdivision of the prisoners as should render the task far less difficult, and such an advantage too as breaks up the congregated association of criminals in other locations. Another matter of no small importance is this, that the refractory and incorrigible of any one vessel can be speedily removed and put under a severer discipline on shore. The well-conducted, on the contrary, can be easily rewarded by changes of a like nature but for a very different purpose.

The curing establishment for the fish beyond the demands of the ordinary markets should not only never remain idle, but might be made of itself another useful and salutary mode for reforming the prisoners. Besides learning a good business which need never fail them, they contribute, and know and feel that they contribute, to increase the general stores of the country. Here again also, in extreme and urgent cases, changes could be made without difficulty for taking those to sea who behaved ill in exchange for others whose conduct should warrant favour. Both parties, however, would be better educated both as fishers and curers. The curing station and all its stores and accompaniments, with buildings sufficiently extensive to contain more than the probable supply needed for this particular purpose, will have to be erected, and to this unquestionably a clergyman should be attached. The expenses are still likely to be covered by the sum before mentioned of 150,000*l*. In the plan of so entire a separation into small parties of the convicts the superintendence of them seems to be greatly facilitated and the advantages of reformation increased, and by setting apart a portion of the products of that labour to be given to them at the end of their punishment another strong motive would be furnished for their honest and industrious exertions. At the same time, all the chances of combination or increase of delinquency are greatly lessened. What can the convict get by a return to his former habits on board the ship? Nothing but greater punishment and disgrace. What, on the contrary, does he obtain by his regular and ordinary labour? Comfort, and the certainty almost of being ultimately returned to society, as he will have acquired a little capital of his own to prevent the necessity of recurring again to criminal pursuits. These appear to be the natural fruits and effects of the plan, and no doubt it is capable of being carried out and applied in a variety of other ways that experience will point out. The principle will not be affected by any variety of its application.

I am aware that this letter being confined to one year's expenditure for one year's supply of convicts may be excepted to as an inadequate remedy beyond that supply. May be so, but on such a subject we ought to look about us on all sides. The convicts being sentenced on

different periods of punishment are consequently in a course of gradual diminution as their respective terms expire. It is not then the 4,000 yearly without diminution within the year, for the ranks will be thinned by disease and death also as well as by expiration of punishment. Well, but all the chances of reformation are thus afforded, and a certain provision made in a part of the convict's own earnings, the probabilities are that when discharged the otherwise certain supply of the same parties to the ranks of crime will be thus diminished. These appear to be such very probable results, that they may be reckoned upon accordingly. To enumerate the advantages in a cursory way, we first break up the congregation of criminals and thereby diminish the means of further exercising their evil propensities. They could gain little by the latter, and so much by the more regular use of their faculties and industry, that we cannot be at a loss to conjecture which course would be preferred and taken. Detection and immediate punishment for misconduct could also more easily be effected. Increased produce of so many convicts would also amply compensate for all their expense, their industry being always well applied and carefully superintended. We certainly have a prospect thus opened before us the most cheering and conclusive. As a proof that the great advantage of deep sea fishing cannot be disputed, the following extract from the Appendix to the Fourth Report of the Commissioners of Fisheries in Ireland, dated 4th June, 1846, is given. This, among other things, states the fact that in the average of three years the returns to one company have exceeded 15 per cent. on capital invested. Between 15 per cent. on capital invested and say only 3 per cent. on the plan proposed, there is surely ample security for the undertaking, but if even less or no returns were realised by the convict fisheries, yet still the immense advantage to the country over the present expenditure in either emigration or imprisonment is undeniable. Here all wasteful, all unproductive outlay is avoided; nearly all the contaminating associations among the parties broken up; all the likely means of reformation consequently facilitated, and the almost instant reward or punishment given or inflicted in the constant changes so easily effected in the removal of convicts as circumstances require.

I have not presumed to go farther than to assign the men to the number of vessels to be used, and the superintendence over them. The formation of the internal rules and regulations is left open to those who have had experience in such a subject in the more accurate knowledge of prison discipline. I apprehend that a smaller proportion of superintendents, with more relaxation in favour of the prisoners, might with safety be adopted. In each vessel will the regulations be enforced. It never can occur that all would on one occasion and at one time revolt, no correspondence with each other being kept up. If by any unforeseen occasion or event, an attempt were made in any one ship to obtain the dominion of her, would it be possible for the revolters to get clear off without recapture by the usual carrying vessels continually employed in bringing supplies of provisions and taking away the fish? No attempt could be more hopeless; none so unlikely to be made where all the real and substantial advantages are the other way; the motives to good conduct daily gaining strength, and the temptations to insurrections and crime gradually diminishing. So manifest indeed are such probable results, that I shall not press this part of the subject further. We come then lastly to another consideration of vast importance to a maritime country in thus affording a more extended nursery for seamen. Fully aware of the objections to convict crews, there is assuredly less to those who shall have been reformed. If it were well ascertained that a thousand men, for instance, had become uniformly steady and obedient and industrious during their probationary period of punishment, little doubt or hesitation could or should exist on any man's mind in employing them in any service whatever. If we resolve never again to admit them to the privileges and confidence of honest men, we consequently so far force them back upon crime. Such conduct, therefore, as it is wholly inconsistent with Christianity, so is it also with a sound and liberal policy.

[This plan, which appears well to deserve the most serious consideration, has been proposed by Mr. John Ilderton Burn, an able and long-experienced solicitor of No. 33, Upper Montague Street, Montague Square.—Ed.]

## CANDIDATES PASSED AT THE EXAMINATION.

*Trinity Term, 1847.*

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &amp;c.</i>
Alexander, Gordon . . .	Frere & Co., Lincoln's Inn
Andrew, Robert . . .	Edward Sheardown, Doncaster
Allaway, James . . .	John Jackson Blandy, Reading
Allix, Wager Townley . .	George Rooper, 68, Lincoln's Inn Fields
Archer, Joseph . . .	Harvey Footner, Andover
Baker, Samuel Edward . .	John Baker, Aldwick Court
Baynes, Walter Francis . .	Walter Prideaux, Goldsmiths' Hall, Foster Lane
Bellington, Charles Esdaile	Henry Whitmarsh, Battle—Frederic Lowry Barnwell, 1, Lincoln's Inn Fields

Blackmore, Hugh Haywood .	Nicholas Lanwarne, Hereford
Bourne, Septimus . . . .	Titus Bourne and Henry Titus Bourne, Alford— <del>Marcus Hunt</del> Castle Donington
Braikenridge, Francis Jerdone	William Braikenridge, 16, Bartlett's Buildings
Brodrick, Thomas . . . .	William Brodrick, Bow Church Yard
Brookfield, Frederick Morris Preston . . . . .	Charles Brookfield, Sheffield—Charles Austin Brookfield, 12, Bedford Row
Burridge, William Edward .	William Burridge, Shaftesbury
Cambridge, John jun. . . .	John Cambridge, Bury St. Edmunds
Campbell, William Knight .	John Wadsworth, Nottingham
Chapman, William Emerson .	Thomas Sturton, Holbeach
Chilcott, Edward . . . . .	John Gilbert Chilcott, Truro
Clabon, Edward . . . . .	John Moxon Clabon, late of West Malling, now of 35 a, Great George Street, Westminster
Clarke, Edward . . . . .	Henry Daubney Harvey, Chard
Clough, Benjamin Morley .	Frederick Hawksley Cartwright, Bawtry
Collins, Charles Atkins . .	Robert Cook, Bath
Cox, Frederick John . . . .	George Cox, 14, Sise Lane
Dalby, Jesse . . . . .	Joseph Wainwright, Wakefield
Dallewy, John . . . . .	Matthew Haywood Williams, Bridgnorth
Duffett, Henry . . . . .	James Lane, 63, Chancery Lane
Eagleton, John William . .	Thomas Fowke Andrew Burnaby, Newark-upon-Trent
Eagleton, Octavius Chapman Tryon . . . . .	Matthew John Rippingham, and William Rose, Great Prescott Street
Edmonds, Edmund . . . . .	Thomas Cadle, Newent
Edmonds, George . . . . .	Edward Wright, Birmingham
Fletcher, William . . . . .	William Burdett, Manchester
Gale, Charles Francis . . .	James Bowen May, 14, Queen Square, Bloomsbury
Game, William . . . . .	Henry Heathcote Statham, and Francis Horner, Liverpool
Gibbon, Henry . . . . .	William Henley Gibbon, 32, Great James Street
Glubb, Peter Burke . . . .	William Gill Glubb, Great Torrington
Haldane, Robert . . . . .	Thomas Gascoigne Norcutt, 34, Queen Square, Bloomsbury
Hallward, Charles Berners .	John Thomas Ambrose, Mistley and Manningtree—Edward Thomas Cardale, late of 2, Bedford Row
Hamer, Thomas Greensit . .	Twisleton Haxley, Wakefield—John Scholey, Wakefield
Hartley, John . . . . .	William Plant Woodcock, Bury
Hawthorn, Edwin Herbert .	Richard Lowe, Cheadle
Hick, Robert . . . . .	Matthew Pearson, Selby
Hill, Richard Price . . . .	Charles Cresswell, Worcester—George Price Hill, Soho Square; Charles Cresswell
Holt, Jonathan . . . . .	Andrew Tucker, late of Coventry, now of 17, Charles Street, Blackfriars Road—Charles Ireland Shirreff, 7, Lincoln's Inn Fields
Hurford, Alexander Samuel .	John Taylor, 2, Castle Street, Holborn; and Oxford
Jennings, William . . . . .	Silas Saul, Carlisle
Kays, John Henry . . . . .	Francis Herbert, 10, Staple Inn — John Watson, jun., late of 10, Henrietta Street, now of 35, Lincoln's Inn Fields; John Watson, sen., 126, Wood Street, Cheapside
Kipping, Thomas . . . . .	Carnell and Gorham, Tonbridge
Knipe, Francis . . . . .	John Williams Knipe, Worcester
Lake, George . . . . .	John Lake, 10, Lincoln's Inn
Lambert, Alfred . . . . .	John Iliffe, 2, Bedford Row
Layton, John . . . . .	Henry Edwards, 8, Ely Place, Holborn
Levy, Henry . . . . .	John Lewis, 7, Arundel Street
Lloyd, Alexander Evan . . .	David Williams, Pwllheli—Anthony Wellington Irwin, Gray's Inn, and Charles William Potts, Chester
Louch, John, jun. . . . .	John Samuel Warren, Langport Eastover — John Swarbreck Gregory, Bedford Row
Lowrey, George Frederic . .	John Lowrey, late of North Shields—Henry Augustus de Me- dina, late of 2, Thavies Inn and North Shields, now of 13, Crosby Hall Chambers, Bishopsgate Street
Milward, George . . . . .	George Frederick Prince Sutton, 6, Basinghall Street
Moore, William George . . .	Joseph Moore, Lincoln
Morris, Edward . . . . .	John Cleave, Hereford
Mylne, Everard . . . . .	Edward Hunt Roberts, Exeter—Henry Brayley Wedlake, 10, King's Bench Walk
Nickoll, John James . . . .	Robert Southee, 16, Ely Place
Norman, George Lewis . . .	Newman and Lyon, Yeovil
Ord, John Charles . . . . .	John Ord, York

Parr, William . . . .	Richard Weston Parr, Poole
Pinchin, John, jun. . . .	William Stone, Bradford
Power, Robert . . . .	Henry Power, Atherstone—John Scargill, 2, Hatton Court, Threadneedle Street
Radcliff, William . . . .	Thomas Toulmin, Liverpool
Redmayne, Thomas, jun. . . .	Joseph Newton, 4, Furnival's Inn—John Champley Rutter, 4, Ely Place
Robinson, William . . . .	Henry Allison, Richmond
Roche, Charles Bennett . . . .	Thomas Corbet Roche, Daventry
Score, Charles Call . . . .	Charles Score, formerly of Sherborne, now of 12, Austin Friars—Thomas Turner, Bath
Skipper, George . . . .	John Skipper, Norwich
Smallwood, John . . . .	William Spurrier, Birmingham
Sparrow, John William . . . .	Henry Tiffen, Sudbury
Spicer, Ralph North . . . .	Ralph Spicer, Great Marlow—George Waller, jun., 24, Finsbury Circus
Spurr, James Frederick . . . .	Henry Spurr, Gainsborough—Samuel Bellamy, Gainsborough
Stansfield, John Fish . . . .	James Stansfield, Ewood, near Todmorden
Stanton, Thomas Knight . . . .	William Charles Lacey, late of 24, Queen Street, Cheapside, now of 28, New Bridge Street—Joseph Edmund Pool, late of 5, Furnival's Inn, now of 1, Walbrook Buildings
Stoker, John George . . . .	John Clayton, Newcastle-upon-Tyne
Story, John Mellor . . . .	John Birks, Hemingford
Taylor, John, jun. . . .	Thomas Ayliff, Holbeach
Thomas, William Joseph . . . .	Alfred Rendall, Hay
Townsend, James Copleston . . . .	William Richard Bishop, Exeter
Wallis, George Oakes . . . .	William Eaton Mousley, Derby
Walpole, Wm. Sturman, (under Articles by the name of William Walpole, jun. . . .	Jonas Walpole, Northwold
West, Frederick . . . .	Thomas Lott, 43, Bow Lane
White, George Graham . . . .	William Shilson, St. Austell
White, John, jun. . . .	John White, late of 134, Leadenhall Street, now of 13, Barge Yard Chambers
Whitehead, Thomas William . . . .	Henry Whitehead, Rochdale
Wills, Thomas Edward . . . .	Thomas Wills, Shaftesbury
Witchell, Edwin . . . .	William Thomas Paris, Stroud
Wittey, Henry . . . .	Samuel Wittey, Colchester
Woodhouse, Joseph Carpenter . . . .	James Thomas Woodhouse, Leominster
Worthington, Thomas . . . .	Edward Trollope, 60, Carey Street
Wright, William . . . .	John Fearenside, Bolton-in-Kendal—John Cowburn, Settle

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

## Courts of Equity.

## EVIDENCE.

## ACCOUNT.

See *Admission*.

## ADMISSION.

*Account. — Agent.*—The plaintiff was the commercial agent of the East India Company at Amboyna. It was his duty to send his account to Jones, the company's agent at Banda, to examine and transmit to the governor of Madras. On the plaintiff's accounts there appeared a balance of 1,325 dollars against him, but on reference to the accounts kept by Jones of the same transactions, instead of a deficiency, 4,771 dollars appeared due to the plaintiff. The company then allowed the 1,325 only. *Held*, that this was not a sufficient admission and recognition of the correctness of Jones's accounts as to entitle the plaintiff,

without further evidence, to the 4,771 dollars. *Farquhar v. The East India Company*, 8 Beav. 260.

## ADMISSIBILITY.

Form of entry in decree. Evidence received at the hearing of the cause, and entered in the decree, is not necessarily admissible as against all parties, on inquiries before the Master, under the decree. *Handford v. Handford*, 5 Hare, 12.

See *Confessions*.

## AGENT.

See *Admission*.

## COMMISSION.

*Petition of right.*—The first step in proceedings upon a petition of right on which the Royal endorsement has been made is, to ascertain the facts on which the petitioner's claim is founded; and a commission for that purpose is of course, unless the Attorney-General be willing to admit the facts as alleged, and to take issue upon them by demurrer. *Baron de*

*Bode, in re: Viscount Canterbury, in re, 2 Phill. 85.*

#### CONFESSIONS.

**Admissibility.—Matters not put in issue.**—Every decree, though it merely directs inquiries, ought to contain a statement of the evidence on which it is founded; and therefore a decree reciting that certain evidence had been read, but that both parties consented that the entry of it should be without prejudice to its admissibility, and thereupon directing certain inquiries, was held to be irregular. *M'Mahon v. Burchell, 2 Phill. 127.*

Documentary evidence of confessions is not inadmissible merely because it is not specifically put in issue. *M'Mahon v. Burchell, 2 Phill. 127.*

#### COPYHOLD.

See *Court Roll.*

#### CROSS-EXAMINATION.

If plaintiff reads the examination in chief of one of the defendant's witnesses, he may read the cross-examination of that witness. *Cazeneuve v. Boazman, 14 Sim. 352.*

#### COURT ROLL.

**Copies.**—Copies of court roll, authenticated by the steward of the manor, are admissible as evidence, though they are not the copies delivered to the tenant of the estate. *Breeze v. Hawker, 14 Sim. 350.*

#### ENTERING EVIDENCE.

It is not the practice to enter evidence as read, saving just exceptions. *Sherwood v. Beveridge, 2 Coll. 536.*

#### EXAMINING DEFENDANT.

Plaintiff replied to a defendant's answer, and afterwards examined him as a witness, but without having withdrawn the replication, or obtained from him a release of his interest in the suit.

The court, on a motion by the plaintiff, supported by an affidavit that the above omissions were accidental and arose from inadvertence, on proving a release by the defendant, to read the defendant's depositions, in the same manner as if the release had been executed before they were taken, and gave the other defendants liberty to cross-examine him. *Knight v. Morrall, 14 Sim. 398.*

#### EXAMINATION OF WITNESSES.

The general rule is, that witnesses resident in London or its neighbourhood ought to be examined before the examiner, and not under a commission; but, *semble*, that the rule is not inflexible. *Sowden v. Marriott, 2 Coll. 578.*

#### FOREIGN LAW.

The incidents to real estate, the right of alienating or limiting it, and the course of succession to it, depend entirely on the law of the country where the estate is situated.

An estate in Sicily was granted to an English subject, which he disposed of by his will, upon certain trusts. *Held*, that as he could not sub-

ject his successor to a course of succession different from that which accorded with the grant and the law of Sicily, so neither could he subject the successor, as such, to any duties or obligations different from the duties and obligations which by the grant and the law of Sicily were annexed to his holding.

The law of a foreign country is to be proved as a matter of fact by the testimony of witnesses. The judge is not supposed to know all the authorities applicable to the case, or whether any older laws or authorities, which may be cited, have been repealed or altered by subsequent laws or authorities, or what are the rules of construction properly applicable to the authorities when ascertained. Ferdinand the Fourth, King of the Two Sicilies, granted to Horatio Viscount Nelson, for himself and the heirs of his body, the estate and duchy of Bronte in Sicily, with power to appoint a successor, to whom solemn investiture should be granted according to the law of Sicily, &c. By a will in the English form, Lord Nelson appointed William, afterwards Earl Nelson, and William Haslewood to succeed to the Bronte estate, and he devised the same to them, upon trust to settle it upon the said William, afterwards Earl Nelson, for life, with remainder to his male issue in strict settlement, with remainder to Mrs. Bolton for life, with remainder to her male issue in strict settlement, &c., &c., if the law of Sicily and the duchy admitted, or if not, in such manner as, in their opinion and discretion, would be consistent with the laws of the said kingdom and duchy, and best or nearest correspond with the trusts declared; and if his intention might be more effectually accomplished through the medium of a trust than by an actual settlement, he empowered his trustees to retain the legal estate. And he authorised his trustees, at their will or pleasure, to sell the Bronte estate, and lay out the purchase-money in England to be held upon like uses. After the testator's death, William Earl Nelson memorialised the King of the Two Sicilies, setting forth the devise of the Bronte estate, and praying a confirmation of the gift and disposition made by the will, and investiture was thereupon granted to him. During the life of William E. Nelson, a law was made in Sicily, whereby entails were abolished, and the persons lawfully in possession of estates became absolute owners. William E. Nelson died without male issue, having devised the Bronte estate to his daughter Lady Bridport. Upon his death the Bronte estate was claimed by Thomas Lord Nelson as the male issue of Mrs. Bolton. The court, upon the evidence, held,—1st, that in the hands of Horatio Viscount Nelson, the fief, though alienable in a particular manner, was not *feudum degenerans* or *in forma largæ*; and that although it was *feudum novum*, it had not the incident of alienability which might have attended *feudum novum* not granted on the same conditions; and, 2ndly, that, upon the death of Viscount Nelson, his successor, either under the appointment or the limitations, became entitled, not to a *feudum*.



*notum* or *fœdum* degenerating, but as *notum* *nobile et antiquum* to be held as *fœdum* rather; 3rdly, that Earl William had been by the will duly appointed successor to the estate, and was, as such, entitled to claim investiture, and as successor became entitled to the estates, with all the rights and restrictions incident thereto by the Sicilian law; that, as the law then stood, the estate was inalienable by himself, and was descendible from him to his male issue, and in default of male issue, to his female issue; and that the opinion or effect could be given to the testator's expressed wish and intention as to the successors of the estate beyond that which the law of Sicily allowed; 4thly, that the trustees could not have made a valid sale, they were compelled to submit to the law of Sicily, and by so doing secured the execution of so much of the trusts as could by the law of Sicily be carried into effect; 5thly, that Earl Nelson, being one of the trustees of the will, was bound to do all that he could to perform the trusts according to the testator's intention, so far as the law enabled him to do, and that he and his estate were answerable in this court for any wilful neglect or violation of his duty; but that the will, as to the Brouste estate, had been executed, so far as it could be; 6thly, that the subsequent alteration in the law of Sicily could not be deemed to have revived the executory nature of the trusts, but that Earl Nelson, as lawful successor of the estate, with all the legal incidents annexed thereto by the law of Sicily, became entitled to the absolute ownership of the estate, which did not continue to be, or then become, liable to the trusts of the will; and, lastly, the court abstained from deciding whether Earl William did or omitted to do anything which by the law of England made him answerable, or his assets liable in this country under the law of election or otherwise, the point not being then properly under consideration. *Earl Nelson v. Lord Bridport*, 8 Beav. 547.

#### FRAUD.

*Circumstantial evidence.*—In a suit by principal against agent, involving charges of fraud against the defendant, the latter was held to lie under the burden of disproving several particulars of the plaintiff's case, although the truth of those particulars was not directly proved, but rested on circumstantial evidence only. *Barker v. Harrison*, 2 Coll. 546.

#### HEARING.

*Inquiry.*—*Practice.*—Inquiries being directed at the first hearing, the evidence was entered as read, "saving just exceptions." *Gee v. Gurney*, 8 Beav. 315.

#### ISSUE, MATTERS IN.

See *Confession*.

#### MATERIALITY OF EVIDENCE.

*Supplemental bill of review.*—*Weight as well as materiality of evidence.*—Where an application is made for leave to file a supplemental bill of review on the ground of the discovery of new

evidence, the question is not merely whether the evidence is material, but whether it is of such weight as, when taken in connection with the mass of evidence adduced on both sides at the former hearing, would have been likely to have turned the scale. *Hungate v. Gascoyne*, 2 Phill. 25.

#### OBJECTION TO EVIDENCE.

*Form of notice in a decree an objection taken to evidence.*—Where an objection is taken to evidence at the hearing of a cause, the decree ought to state the objection and the decision of the court upon it, and the evidence ought to be entered as read or not, accordingly. *Watson v. Parter*, 2 Phill. 5.

#### PEDIGREE.

*Presumption.*—*Death without issue.*—In pedigree cases, an old will, by which the testator purports to leave all his property to collateral relations or friends, is regarded as very strong evidence of his having died without children. *Hungate v. Gascoyne*, 2 Phill. 25.

#### PETITION OF RIGHT.

See *Commission*.

#### PRESUMPTION.

*Satisfaction of legacy.*—After the lapse of several years without claim or payment on account, the court will presume a legacy to be satisfied, although the benefit of the Statute of Limitations may not have been taken by the answer. *Pattison v. Hawksworth*, 34 L. O. 34.

See *Pedigree*.

#### RE-EXAMINATION.

Liberty given to a person not a party to the suit, but who claimed as next of kin, upon an inquiry before the Master to examine a witness who had already been examined in the cause. *Clark v. Hall*, 8 Beav. 395.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Lord Chancellor.

*Alexander v. Osborne*. June 4th, 1847.

NEW ORDERS (NO. 76).—BILL TAKEN PRO CONFESAO AGAINST HUSBAND AND WIFE.

*Under the 76th of the New General Orders of May, 1845, a bill may be taken pro confesso against a husband and wife where no answer has been put in by either of them, and where the husband has been taken in execution by a writ of attachment for want of answer.*

In this suit, the respondents Bartholomew Hoggar and Martha his wife not having appeared, an application was entered for them by the plaintiff. The husband was subsequently taken in execution, under a writ of attachment, for want of answer of himself and



his wife. In March last, a motion that the bill might be taken *pro confesso* against the said defendant and his wife, under the 76th of the New General Orders of May, 1845, was refused by Vice-Chancellor Knight Bruce, upon the grounds, as it was stated, that the words of the above-mentioned order to the effect, that upon the execution of an attachment for want of answer against any defendant, such defendant may be served with a notice of motion that the bill may be taken *pro confesso* against such defendant, did not provide for the present case, as the words "such defendant" referred, in his Honour's opinion, to an individual who had been attached and was to be served with the notice, and could not be extended in this instance to the wife. His Honour having ordered that the bill should be, at the hearing of the cause, taken *pro confesso* against the husband only,—

Mr. Last applied that the Vice-Chancellor's order might be varied by directing that the bill should be taken *pro confesso* against the husband and wife.

The Lord Chancellor having remarked, that in this case the husband and wife must be considered as one person, and perused the 76th Order, said, there might be some difficulty in construing the words of it, but it was clearly intended to include this case, and he should therefore so construe it. This would have been the course under the old practice, which had not been altered by the new orders, and his lordship accordingly directed his Honour's Order to be varied as required by counsel.

#### Rolls Court.

*Smith v. Effingham.* April 16, & May 3, 1847.

**COSTS.—COUNSEL.—SHORT-HAND WRITERS.**

*On the taxation of costs as between party and party, a special fee to counsel; a fee to a second leading counsel; fees for more than one consultation; and a charge for shorthand writer's notes, were disallowed. Semble, Nickell v. Haslam, overruled.*

THIS was a petition that it might be referred to the taxing master to review his certificate disallowing, upon taxation, charges for the short-hand writer's notes of the argument before the Master of the Rolls, and of his judgment; a special fee given to Sir Fitzroy Kelly on appeal before the Lord Chancellor; a fee to the leading equity counsel who was employed in the appeal with Sir F. Kelly; and the fees for two out of three consultations. The costs were given as between party and party.

Mr. Wilcocks, for the petition, cited *Nickell v. Haslam*, 9 Jur. 649; 30 Legal Observer, 406; *Wastell v. Leslie*, 14 Sim. 83; *Morris v. Hunt*, 1 Chitty, 544; *Malin v. Price*, 1 Phill. 590. He referred also to the 120th Order of May, 1845, as indicative of an intention on the part of the court to enlarge, rather than restrict, the rule by which the Master should be guided in allowing costs upon taxation.

Mr. Kindersley and Mr. Cooke appeared in support of the Master's certificate.

The point most argued was, whether the decision in *Nickell v. Haslam*, where the Vice-Chancellor of England allowed a special fee to Sir F. Pollock for coming out of his own court, upon the ground that otherwise the right of parties to choose their own counsel would be interfered with, ought to be followed.

There was some question as to whether the Master had exercised a discretion in disallowing the items the disallowance of which was complained of; or whether he had proceeded upon a supposed rule of the court, without taking into consideration the circumstances of the case; and in consequence the Master of the Rolls deferred his judgment until he should have ascertained from the Master the ground of his decision. It appeared that the Master had disallowed the items, because, in his opinion, the charges were not reasonable under the circumstances of the case.

Lord Langdale affirmed the Master's decision. He said, that although it was undoubtedly the right of every party to employ what counsel he pleased, it did not follow that he ought to be allowed to throw upon the opposite party the extra costs thus occasioned. All counsel were not equally at liberty, and those whose time was much occupied laid down rules for their own practice; but although a party who was entitled to his costs ought to be allowed all proper expense occurred in procuring counsel, he thought there should be a limit. If any party thought fit to employ counsel who could not be procured without greater expense than usual, he ought to bear this extra expense himself. This disposed of the first point. In respect to the short-hand writer's notes, it was undoubtedly of importance to have a correct statement of what took place upon the hearing; and if, from the contemporaneous sittings of the courts, it was doubtful whether counsel would be able to make and complete notes of the whole proceeding themselves, it might be very proper to employ a short-hand writer to take notes; but the solicitor should arrange with his own client whether such an expense should be incurred; it ought not to be thrown upon the opposite party. Then, as to the employment of three counsel, it was a great convenience to have the counsel who had argued the case on the hearing to argue it on rehearing; but here different counsel, both leading and junior, had been employed; and the employment of three appeared quite unnecessary: two only had been employed at the hearing; yet, if three were needed at all, it would be when the difficulties of the case were not fully known, and the points to be insisted on upon the other side were not discovered. He thought the Master right in disallowing the fee to the third counsel. Lastly, as to the consultations, he thought one only could be allowed. In a special case, if the employment of counsel not familiar with the course of proceeding at the court was required, more than one consultation might indeed be necessary. But the present case was not of that nature, and there could be the less necessity for re-

peated consultations where all the evidence was in writing, and especially in a case where all the arguments used were known from the previous hearing. The petition must be dismissed with costs.

**Vice-Chancellor of England.**

*Lamont v. Primavesi.* June 5th, 1847.

PRACTICE.—INFANT.—GUARDIAN AD LITEM.

*Under special circumstances, the court will appoint a guardian ad litem to an infant resident within the jurisdiction, without bringing him into court, or by means of a commission.*

A MOTION was made in this case by Mr. G. L. Russell for the appointment of a guardian ad litem to an infant residing within the jurisdiction of the court without the production of the infant in court or the issuing of a commission pursuant to the ancient practice of the court. The affidavit in support of the motion stated that the infant resided in Worcestershire, and that it would be very expensive and very inconvenient to produce him in court. The case of *Drant v. Vause*, 2 Y. & C. (C. C.) 524, was mentioned to the court, in which a similar application was made to Vice-Chancellor Knight Bruce, and it was there suggested that the opinion of the Lord Chancellor should be taken, and his lordship made the order on the production of an affidavit that the person to be appointed guardian was a proper person and had no interest adverse to the infant.

The Vice-Chancellor, on the authority of that case, made the order.\*

**Vice-Chancellor Knight Bruce.**

*M'Neill v. Williams.* Jan. 22nd, 1847.

PRACTICE.—INJUNCTION.—COPYRIGHT.

*The court, on a question of injunction relating to copyright, before the legal title is established, will give great weight to the consideration of the question, which of the parties to the dispute is more likely to suffer by an erroneous or hasty judgment thereon, and to the consideration of the very possible, if not probable, effect which an injunction may have to the defendant's prejudice in an action.*

THIS was a motion for an injunction to restrain Messrs. Williams & Rust, Mr. E. G. Hughes, and Mr. W. J. Hughes from selling or disposing of a book entitled "Comprehensive Tables for the Calculation of Earthwork as connected with Railways, Canals, Docks, Harbours, &c.," and to restrain them from printing, publishing, selling, or disposing of any other book, publication, or work, containing any calculations, arithmetical results, or figures copied or taken from the work of Sir John M'Neill, the plaintiff, entitled "Tables for Calculating the Cubic Quantity of Earthwork in the Cuttings and Embankments of

Canals, Railways and Turnpike Roads." The plaintiff, for the purpose of showing that the defendants had used his work in a practical manner, relied upon the fact that seven errors which appeared in his work had found their way into that of the defendants, and in his affidavit stated, that the plan pursued by him in making his calculations was an adaptation of calculations from earthworks of the prismoidal formula, such formula being a mode discovered and suggested by Dr. Hutton for ascertaining the cubical contents of bodies of a prismoidal figure, and that such calculations had been used by the plaintiff in his business before he published his work.

The defendants in their affidavits swore that the occurrence of the seven errors in both books was the result of an accident, and that the calculations in the defendant's book had been actually made by the author, and not copied from the plaintiff's work, and that seventy errors appeared in the defendant's book which did not exist in the plaintiff's.

Bacon and Renshaw for the plaintiff cited *Matthewson v. Stockdale*, 12 Ves. 270; and *Wilkins v. Aikin*, 17 Ves. 422.

Teed and Nevins, for the defendants, cited and observed on *Spottiswoode v. Clark*,<sup>b</sup> before the present Lord Chancellor, and in answer to a question from the court, consented that in case it should be established that there had been an invasion of the plaintiff's copyright, damages should be ascertained in this court, and that the defendants would facilitate legal proceedings.

His Honour said:—Of late years the tendency or inclination of the Court of Chancery has, I think, been, and properly been, rather to restrict and to diminish, than to extend or increase, the class or number of cases in which it interferes by injunction in cases of contested copyright before the establishment of the legal title. The court has, of late years especially, given great weight to the consideration of the question, which of the two parties to the dispute is more likely to suffer by an erroneous or hasty judgment of an interlocutory nature against them; and to the consideration also of the very possible, if not probable, effect which an injunction may have to the defendant's prejudice in an action. I agree that there ought to be none. I have in this case to weigh, on the one hand, the suspicious nature of the defendant's case—for suspicious I confess, upon the present materials, it appears to me to be—and the probable mischief from not interfering at present in his favour, if he shall ultimately prove to be right; and, on the other hand, the possibility,—the rational possibility,—for I am unable to bring myself to deny the rational possibility,—that the plaintiff may be right, I have also to consider the mischief generally that may be done by interfering in this stage of the cause, if the defendants shall ultimately appear to be right, including particularly the possible prejudice which may be created against them in an

\* See *Stithell v. Blair*, 13 Sim. 393.

<sup>b</sup> 2 Phill. 154.

action by the existence of an injunction. Upon the whole, I think the ends of justice in this case will be better answered by abstaining from granting the injunction at present; the defendants continuing to keep the account which they have already undertaken to continue, and giving that undertaking which the defendant's counsel have consented to give, with respect to damages, in case the infringement is proved, and the plaintiff's title is established; and facilitating proceedings at law in any reasonable way the plaintiff in equity may require. The motion may stand over, with leave to the plaintiff to bring such action as he may be advised, the action to be brought only against the defendants Messrs. Williams and Rust, the book-sellers.

Queen's Bench.

(Before the Four Judges.)

*Munden v. The Duke of Brunswick.* Trinity Term, 1847.

PLEADING.—LIABILITY OF A SOVEREIGN PRINCE RESIDENT IN THIS COUNTRY.

*To an action of debt on an annuity bond executed by the defendant when he was reigning Duke of Brunswick, but who was resident in this country at the time the action was commenced, a plea merely alleging that the defendant was a sovereign prince at the time the deed was executed was held no answer to the action, the plea not showing that the defendant was a sovereign prince at the time the action was brought and plea pleaded, nor that the deed was executed in respect of a subject-matter which when made could not be enforced by law in the country in which it was made.*

THIS was an action to recover the arrears of an annuity granted by the defendant to the plaintiff. The defendant pleaded that this court ought not to take cognizance of the action, because at the time of granting the annuity the defendant was the reigning Duke of Brunswick and Luneburg, and that the defendant was and is fully entitled to the rights and prerogatives of reigning duke. The plaintiff replied, that the debt was contracted by the defendant in his private capacity, and not in any matter appertaining to the kingdom of Brunswick, and that the defendant is resident in this country, and is living under the protection of the laws of this country, not as a sovereign prince, but as a private person. To this replication there was a demurrer on the ground that it was an informal and improper traverse of the allegations in the plea.

Mr. Lush in support of the demurrer. A crown prince is *primâ facie* exempt from the jurisdiction of the courts of this country, and, although resident in this country, yet he is not liable on a deed executed by him in his own dominions in his private capacity, and not connected with the government of his own country. Whatever immunities the defendant would have been entitled to in his own country, he will still be entitled to in respect of a deed

executed there. *Melan v. The Duke de Fitz-james*; <sup>a</sup> *The Duke of Brunswick v. The King of Hanover*.<sup>b</sup>

Mr. Bovill contra. These pleadings are framed in conformity with the judgment of the Master of the Rolls in *The Duke of Brunswick v. The King of Hanover*. A sovereign prince on a visit to this country would not be liable, because he owes no allegiance to this country, but if he is resident and becomes domiciled in this country, he then renders himself liable to the laws the same as any of the subjects. The plea is defective and informal for not stating that the defendant was a sovereign prince when the action was commenced, and for not alleging that he made the contract in the character of a sovereign prince, so that he would not have been liable upon it according to the laws of Brunswick.

Mr. Lush in reply. The plea alleges that the defendant was a sovereign prince when the contract was entered into, and that he was entitled to certain rights and privileges, and the presumption is, unless the contrary is shown, that the same state of things continued.

*Cur. adv. vult.*

Lord Denman, C. J., now delivered the judgment of the court.<sup>c</sup> The court has no doubt that the plea is bad. It does not state that the defendant was a sovereign prince at the time of the commencement of the action and plea pleaded. The plea states that the defendant was at the time of entering into this contract a sovereign prince, and that the contract was made within the territory in which he exercised the powers of a sovereign prince. But being a sovereign at the time of making the contract is in itself an immaterial circumstance. That the defendant possessed that character may have been a matter of opinion. He might have been a usurper and have been since properly deposed. If the contract had been made by a *de facto* sovereign prince as a matter of state, and if, being so made, it could not be enforced by law in the country in which it was made, those facts might have furnished a defence to the action, but it cannot be a good plea to allege merely that at the time of making the contract the defendant was a sovereign prince. For a sovereign prince may contract personal obligations. Whether they could be enforced by law in his own country we do not know, and we receive no information on that subject from the plea. We cannot presume that it may or may not be enforced. We cannot make a presumption either way. Nor do we know from the plea whether the contract here was a matter of state, or a purely personal matter. The plea does not tell us anything, except that at the time of making the contract the defendant was the sovereign prince of the place where it was made. This alone is not enough to constitute an answer to the action, and the judgment of the court must therefore be given for the plaintiff.

Judgment for the plaintiff.

<sup>a</sup> 1 Bos. & Pul. 138.

<sup>b</sup> 6 Beavan, 1.  
The case was argued in Easter Term.

**Exchequer.**

*Charles v. Newsam and another.* Trinity Term.  
25th June, 1847.

**RAILWAY SCRIP.—FORGERY.—MISDEMEANOR.**

*Railway scrip is not "an acquittance or receipt for money," or "an accountable receipt for money," within the meaning of 1 W. 4, c. 66, s. 10; therefore a forgery of railway scrip is not a felony, but a misdemeanor only.*

THIS was an action of trespass for false imprisonment. The defendant pleaded, first, not guilty; secondly, a special plea of objection; that the plaintiff was suspected of uttering forged "accountable receipts for money."

At the trial before the Chief Baron at Guildhall, it appeared, that the defendant was given into custody by the defendants, and taken before the Lord Mayor on a charge of uttering forged railway scrip. On the part of the plaintiff it was objected, that the plea was not proved, inasmuch as "railway scrip" was not an "accountable receipt for money," within the meaning of the 1 Will. 4, c. 66, s. 10. The defendant's counsel therefore applied to amend the plea, by substituting for the words "accountable receipt," the words "acquittance or receipt for money." The learned judge having made the amendment, the jury found a verdict for the plaintiff on the plea of not guilty, and for the defendant on the plea of justification, and assessed contingent damages.

A rule nisi having been obtained for a new trial, or for judgment *non obstante veredicto* on the second plea.

*Watson and Greenwood* showed cause. The question is, whether the forgery of railway scrip is a felony or a misdemeanor. That will depend upon whether railway scrip is within the 1 Will. 4, c. 66, s. 10, which declares, that it shall be a felony to forge or utter, knowing to be forged, "any acquittance or receipt, either for money or goods or any accountable receipt either for money or goods, or for any note, bill, or other security for payment of money." Admitting the plea to be incorrect as it stood, the amendment has brought the facts within the statute, since railway scrip is clearly "an acquittance or receipt for money. Any acknowledgment in the course of business, either by a

secretary or clerk that money has been paid, whether paid to them or a banker, is a receipt within the meaning of this statute. It is different from the Stamp Act, the words of which are, "a receipt or discharge given for or upon the payment of money." That necessarily implies a receipt by the person to whom the money is paid. There are two classes of receipts, the one formally stating that money has passed in discharge of a debt, the other being a mere accountable receipt. The statement that money has been paid is an acquittance or receipt within the 1 W. 4, c. 66. *Reg. v Price*, 6 C. & P. 634; *Reg. v Vandman*, 2 M. & Rob. 147; *Thompson v. Ashley*, 6 B. & C. 541.

Sir F. Thesiger, in support of the rule, was stopped by the court.

*Pollock, C. B.* Railway scrip is not "an acquittance receipt or accountable receipt for money." It is no more than an acknowledgment that the bearer is entitled to shares, he having paid some money.

*Alderson, B.* It is nothing more than a certificate that somebody has done something which at some time will entitle the holder to shares. In the statute the word "acquittance" is found in connection with the word "receipt;" that means a receipt which acquits.

*Rolfe, B.*, concurred.

There being also an objection as to the direction of the learned judge, the court made the rule absolute for a new trial.

**LEGAL OBITUARY.**

June 10, 1847. — Thomas Bentley Phillips, Esq., of Beverley, Solicitor.

June 11. — Richard Hutton, Esq., of the Middle Temple, Barrister-at-Law, aged 38. Called to the Bar 31st Nov., 1834.

June 12. — John Perry, Esq., of Gray's Inn, Barrister-at-Law, and one of the benchers of that society, aged 75. Called to the Bar 13th June, 1804.

June 14. — James Borton, Esq., of Bury St. Edmunds, Solicitor, aged 76. He was 35 years Clerk of the Peace for the County of Suffolk.

June 21. — David Leahy, Esq., of Gray's Inn, Barrister-at-Law, and Judge of the County Courts of Lambeth and Greenwich. Called to the Bar 29th Jan. 1831.

**Privy Council Appeals.**

THE Judicial Committee of the Privy Council will meet for the dispatch of business on the following days, viz :—

Monday . . .	June 21, 1847.
Tuesday . . .	22 "
Wednesday . . .	23 "
Thursday . . .	24 "
Friday . . .	25 "
Saturday . . .	26 "
Monday . . .	27 "

Tuesday . . .	29 "
Wednesday . . .	30 "
Thursday . . .	July 1 "
Friday . . .	2 "

By order of the LORD PRESIDENT,  
Council Office, Whitehall, June 10, 1847.

## LIST OF APPEALS.

Ready for hearing before the Judicial Committee of the Privy Council.

APPELLANTS.	RESPONDENTS.	WHENCE SET DOWN.	APPELLANTS.	SOLICITORS OR PROCTORS.	RESPONDENTS.
Ramrutton Rae	Farooq-oon-Nissa	Bengal, Jan. 4, 1847	Sutton & Ewens	Desborough and Young, pt. hd.	
Mussumat Gholab	Collector of Be-				
Koonwur . . . .	nares . . . .	Bengal, Jan. 30, 1847	R. Clarke	Lawfords.	
Rany Pudmarati	Baboo Dola Singh	Bengal, February 16, 1847	Same . . . .	Same.	
Fennel . . . .	Bate . . . .	Court of Arches March 30, 1847	Rothery . . . .	Jenner, Dyke and Jenner.	
Ras Muni Dibiah	Prawn Kishan Doss	Bengal, April 13, 1847	R. Clarke	Lawfords.	
Rany Srimuty Di-	Rany Khoond Suta	Bengal, April 13, 1847	Same . . . .	Same.	
Representatives of					
the Count de	Commissioners of		Beavan and An-	Solicitors to Treas-	
Wall . . . .	French Claims	April 20, 1847	derson . . . .	ury.	
Bainbridge . . .	Bainbridge . . .	Bombay, April 23, 1847	Cherrill . . . .	Pownal.	
Phillips (Annie)	Phillips (Revell)	Court of Arches, April, 23 1847	Toller . . . .	Toker.	
Shersby . . . .	Hibbert . . . .	High Court of Admiralty, May 6, 1847	Rothery . . . .	Deacon, (ship D. of Manchester.	
Vyphins . . . .	Dyett . . . .	British Guiana, May 18, 1847	Whitaker . . . .	Gregory & Faulkner.	
Logan . . . .	Lemesurier, . . .	Canada, May 19, 1847	Oliverson & Co.	Simpson & Cobb.	
Flint . . . .	Walker . . . .	New South Wales, May 22, 1847	Hutchison . . .	Walton.	
Michell . . . .	Thomas . . . .	Prerogative Court, May 22, 1847	Nelson . . . .	Slade, Wadson & Crickitt.	
Bank of Austral-	Breillat . . . .	New South Wales, May 25, 1847	Farrer . . . .	(Exparte appel-	
asia . . . .	Butts . . . .	British Guiana, May 22, 1847		lant.)	
Cameron . . . .				Jones & Trinder, (exparterespondent.)	
Green . . . .	Ryan . . . .	High Court of Admiralty, May 25, 1847	Stokes . . . .	Puckle (ship Se-	
Store . . . .	Barnes . . . .	Court of Arches, May 28, 1847	Tebbs . . . .	ringapatam.)	
				Toller.	

## PATENT CASES.

Pattinson's Patent Extension, (Desilverization of Lead), to be heard on the 21st June, at 10 A. M.  
 Smith and Robertson's Patent Extension, (Spinning Machinery), to be heard after the preceding case.

## CHANCERY CAUSE LISTS.

## Lord Chancellor.

Appeals after Trinity Term, 1847.

AT LINCOLN'S INN.

## APPEALS.

S.O.G. Attorney-Gen.	{ Masters & Wardens, &c. of the City of Bristol }	appeal
S. O. Black	Chaytor	do. *
S. O. Johnson	Reynolds fur. dirs. by ord.	
S. O. Watts	Hyde	appeal
S. O. Caton	Rideout	do.
Dale	Hamilton	3 appeals pt. hd,
Blair	Bromley	appeal
Eversfield	Troup	do.
Robinson	Wall	do.
Butlin	Masters	do.
Westwood	Slater	do.
	{ 4 causes }	do.
{ Dunsming	Hards	do.
{ Ditto	Ditto	do.
{ Smith	Barneby	do.
{ Winstanley	Smith	2 appeals.

Scawin	Watson	appeal.
{ Hodgkinson	Barrow	do.
{ Ditto	Jackson	do.
Glascott	Lang	do.
Okill	Whittaker	do.
{ Williams	Powell	do.
{ Ditto	Davis	do.
{ Dawson	Paver	do.
{ Ditto	Ditto	do.
{ Attorney-Gen.	Pearson	do.
{ Ditto	Steward	do.
{ Ditto	Hill	do.
Wood	Rowcliffe, 2 appeals.	
Attorney-Gen.	Gibbs	appeal.
Wright	Lilley	do.
Lawrence	Bowle, fur. dirs. by order.	
Hollingworth	Grussell, appeal	
Wynn	Styan	do.
{ Crockett	Crockett	do.
{ Ditto	Carter	do.
Fuller	Willis, rehg.	
{ Lancaster	Evors	do.
{ Ditto	Morley	appeal
White	Briggs	do.

Vice-Chancellor of England.

Causes after Trinity Term, 1847.

PLEAS, DEMURRERS, CAUSES, AND FURTHER DIRECTIONS.

Trulock v. Robey, dem. pt. hd.  
 Knill v. Chadwick, dem.  
 Boyd v. Boyd, exons.  
 Evans v. Roper, ditto.  
 S.O.G. { Parker v. Day }  
           { Ditto v. Goude }  
 Grant v. Hutchinson, fur. dirs. and costs.  
 Smith v. Bury and Ipswich Railway Company.  
 S. O. G. Wastell v. Leslie, 8 causes, exons. and fur. dirs.  
 Evans v. Crosbie.  
 Fussell v. Hooper, fur. dirs. and costs.  
 { Cooke v. Cholmondeley }  
 { Ditto v. Moore }  
 Sutton v. Clifford, fur. dirs. and costs.  
 Hackett v. Clifton ditto.  
 { Attorney-General v. Grainger }  
 { Governors of Christ's Hospital } by order.  
 v. Grainger  
 S.O. Webb v. Webb.  
 Byrn v. Hay, fur. dirs. and costs.  
 Herring v. Hay.  
 { Hiles v. Moore }  
 { Same v. Gleadow }  
 { Same v. Moore }  
 Carpenter v. Bott, exons.  
 Edwards v. Priestly, fur. dirs. and costs.  
 Steward v. Forbes.  
 Tinslay v. Genese.  
 Bourne v. Dufaur, fur. dirs. & costs and petn.  
 Paynter v. Kingdon, 3 causes.  
 Robinson v. Smith, fur. dirs. and costs.  
 Waller v. Westcott, ditto.  
 Cochran v. Fearon, exons.  
 Anning v. Hurley, fur. dirs. and costs.  
 Ripplin v. Dolman, ditto.  
 Rand v. M'Mahon, exons. and fur. dirs.  
 Hewlett v. Wellington, fur. dirs. and costs.  
 Major v. Major, 2 causes.  
 Rand v. M'Mahon, exons.  
 Chambers v. Waters, exons.  
 { Hickson v. Mainwaring. }  
 { Same v. Smith }  
 25th June, Taylor v. Webley, fur. dirs. and costs.  
 { Milroy v. Milroy } fur. dirs. and costs.  
 { Ditto v. Dean }  
 Wade v. Smith, fur. dirs. and costs.  
 Chambre v. Siggers.  
 Nalder v. Hawkins, fur. dirs. and costs.  
 Haygard v. Anderton, ditto.  
 Pugh v. King.  
 Major v. Major.  
 Donovan v. Cox.  
 Paxton v. Humble, fur. dirs. and costs.  
 Carter v. Barnard.  
 Marks v. Solomons.  
 Strother v. Dutton, exons.  
 Short, Rawlins v. Rawlins.  
 Chambers v. Artis, exons.  
 Hopkinson v. Metaxa.  
 Curling v. Hebert.  
 Marr v. Haslehurst.  
 Walsh v. Trevanion.  
 Gallier v. Cooke.  
 Flint v. Warren, fur. dirs. and costs.  
 Doughty v. Saltwell ditto.  
 Short, Bartholomew v. Bartholomew.  
 Short, Ainsworth v. Taylor.  
 Crosley v. Crosley, fur. dirs. and costs.

Short, Brydges v. Holmes.

Jarvis v. Wardale.

Parkin v. Balgrove, fur. dirs. and costs.

James v. Wright ditto.

Sewell v. Murray, otherwise Clarke, 4 causes.

Lysure v. Marryat.

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Raven v. Kirl, exons.  
 Skey v. Garlike, dem.  
 Michas., Dodsworth v. Lord Kinnard, 2 causes.  
 Ditto, Smith v. Smith, 3 causes.  
 S. O. Bonsfield v. Mould, 2 causes pt. hd.  
 June 24 { Barker v. Birch, }  
           { Same v. Same, }  
           { Wills v. Same. }  
 June 28 { Bishop v. Chappel, fur. dirs. and costs. }  
           { Ditto v. ditto, cause. }  
 Grant v. Hutchinson  
 Dickenson v. Callbeck.  
 Schofield v. Calmac.  
 June 19, Gillan v. Morrison.  
 June 19, Massey v. Duncan.  
 Edinburgh Life Insurance Company v. Jones.  
 Congreve v. Harrison.  
 Howells v. Williams.  
 June 29, Sparkman v. Heming.  
 June 28, Reynolds v. Whelan.  
 July 1, Shand v. Shand.  
 June 30, Cunliffe v. Lawrence.  
 July 1, Goodricke v. Ward.  
 July 2, Beaumont v. Hennell.  
 July 5, Blair v. Ormond.  
 Ditto Clark v. Cook.  
 Ditto Smith v. Short.  
 July 18, Perrott v. Novelli.  
 July 8, Bull v. Falkner.  
 June 21, Penrice v. Penrice.  
 July 18, Goodricke v. Moore.  
 Short, Hall v. Gee.  
 July 14, Smith v. Mornington.  
 June 21, Wroughton v. Colquhoun, fur. dirs. and petn.  
 July 15, Sewell v. Walker.  
 June 21, Harrison v. Branfil, fur. dirs. and costs.  
 Short, Gilbard v. Pike.  
 July 16, Arnold v. Barlow.  
 Short, Ferraby v. Ferraby.  
 July 16, Weaver v. Grant.  
 Brewster v. Thorpe, 2 causes.  
 Nokes v. Earl of Kilmorey.  
 Parker v. Constable, 3 causes.  
 Ditto Sturgis.  
 Makepeace v. Jury.

Vice-Chancellor Collyer.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Michs. T., Menzies v. Desanges.  
 Michs. T., Attorney-General v. Ward.  
 June 30, Phillipson v. Gatty.  
 To fix { Moor v. Vardon, }  
 a day { Ditto v. Lachlan. }  
 Say v. Creed.  
 Short, Dowle v. Lucy, fur. dirs. and costs.  
 Walker v. Holloway.  
 S.O.G. { Clarke v. Melville. }  
           { Ditto v. Rickards. }  
 June 19, Rochfort v. Lambert, fur. dirs. and petition, pt. hd.  
 June 30, Gatty v. Phillipson.  
 { Belsham v. Percival }  
 { Ditto v. Harrison. }

Arnold v. Sturgis.  
 Jacob v. Short, 3 causes.  
 June 19, Major v. Ward, exons.  
 July 1, Robinson v. Robinson.  
 July 7, Hughes v. Williams.  
 June 19 { Harvey v. Towell, } fur. dirs. and  
           { Ditto v. Gurney, } costs.  
 July 3, Matthews v. Chichester.  
 July 6, Halstead v. Slater.  
 De Visne v. De Visne, fur. dirs. and costs.  
 { Hickes v. Wilson, }  
 { Ditto v. Hine. }  
 Fagge v. Fagge,  
 { Morrison v. Hoppe }  
 { Ditto v. King }  
 Ristell v. Wheatley.  
 Parry v. Howell.

Bateman v. Williams.  
 Kincaid v. Brown.  
 Beech v. Ford.  
 Brinkley v. Andrew.  
 Lewis v. Dancer.  
 Hunt v. Peasack.  
 Darnell v. Smith.  
 Ward v. Price.  
 Halford v. Stone.  
 Sheffield v. Van Droop.  
 Thomas v. Bagnall, fur. dirs. and costs.  
 Attorney-Gen. v. Northcote ditto.  
 Hicks v. Hine, 2 causes.  
 Green v. Briggs.  
 Wood v. Mathes.  
 Short, Dew v. Bernard, fur. dirs. and costs.  
 Attorney-Gen. v. Storey.

## CIRCUITS OF THE JUDGES.

(The Mr. Baron Platt will remain in Town.)

SUMMER CIRCUITS. 1847.	MIDLAND.	WESTERN.	NORTHERN.	HOME.	NORFOLK.	OXFORD.	NORTH WALES.	SOUTH WALES.
Commission Days.	Lord Den- man B. Rolfe	L.C.J. Wilde. J. Williams.	L. C. B. Pollock. J. Wight- man.	B. Parke J. Coltman	B. Alderson. J. Patteson.	J. Coleridge. J. Erie.	J. Maule.	J. Cress- well.
Wednesday July 7								Cardiff
Thursday . . . 8				Hertford		Abingdon		
Friday . . . 9					Buckingham			
Saturday . . . 10			York & City		Oxford			
Monday . . . 12		Winchester.		Chelmsfd.				
Tuesday . . . 13					Bedford		Newtown	Carmar-
Wednesday . . 14	Northamp-					Worcester		[then
Friday . . . 16	[ton				Huntingdon	[& City Dolgelly		
Saturday . . . 17	Lincoln &	Dorchester		Lewes	Cambridge		Carnarvon	Haverford
Monday . . . 19	[City					Stafford	[west & Tn	Cardigan
Wednesday . . 21	Nottingham	Exeter & Co.			Norwich &		Beaumaris	
Thursday . . . 22	[& Tn.			Maidstone	[City		Ruthin	Brecon
Saturday . . . 24	Derby		Durham			Shrewsbury		
Tuesday . . . 27					Ipswich		Mold	Prestelgn
Wednesday . . 28		Bodmin				Hereford		
Thursday . . . 29	Leicest. & B.		Newcastle &	[Tn. Croydon		Monmouth	Chester	Chester
Saturday . . . 31								
Monday . . Aug. 2	Oakham		Carlisle					
Monday . . . 2	Coventry							
Wednesday . . 4	Warwick	Bridgewater				Gloster & C.		
Thursday . . . 5			Appleby					
Saturday . . . 7			Lancaster					
Wednesday . . 11		Devizes	Liverpool					
Monday . . . 16		Bristol						

PROCEEDINGS IN PARLIAMENT RE-  
LATING TO THE LAW.

Royal Assents. June 21, 1847.

Poor Removal.  
 Towns Improvement Clauses.  
 Drainage of Lands.

## House of Lords.

## NEW BILLS IN PROGRESS.

London City Small Debts. For 2nd reading.  
 Juvenile Offenders. For 3rd reading.  
 Highway Rates. For 2nd reading.  
 Clergy Offences. In Committee.

## House of Commons.

## NEW BILLS IN PROGRESS.

Encumbered Estates (Ireland). Re-com-  
mitted.

Highways Bill. In Committee.

Registration of Voters. Re-committed.  
Parliamentary Electors. For 2nd reading.

Vexatious Actions. In Committee.

Insolvent Debtors. For 2nd reading.

Joint Stock Companies. In Committee.

House of Commons Taxation of Costs. For  
further consideration of report.Poor Laws Administration. For 3rd read-  
ing.Abolition of Mastership in Chancery. For  
2nd reading.Abolition of Public Office in Chancery.  
For 2nd reading.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JULY 3, 1847.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

### ALTERATIONS IN THE JURISDICTION IN BANKRUPTCY AND INSOLVENCY.

THE bill proceeding through parliament, to abolish the Court of Review and alter the jurisdiction in bankruptcy and insolvency, has undergone several changes of greater or less importance since its introduction to the House of Lords. We have now before us a copy printed by order of the House of Commons on the 25th of June, after the bill had come from the House of Peers. The fourth section is altered and remodelled in various particulars. The mistake noticed in our last number, (*ante*, p. 187,) of transferring the jurisdiction in bankruptcy in cases where a fiat issues on the petition of the trader, under the 7 & 8 Vict. c. 96, s. 41, has been corrected, by confining the transfer of jurisdiction to so much of the recited acts as relates to “matters of insolvency.” On the other hand, a provision has been introduced into this section transferring the jurisdiction and authority of the Commissioners of the Court of Bankruptcy under the Small Debts Act; (8 & 9 Vict. c. 127,) to the Court for the Relief of Insolvent Debtors and the judges of the County Courts; and it is provided that the provisional assignee of the Insolvent Court, and the Clerk of the County Court, shall be and act as the official assignee of the estate and effects of the insolvent.

The transfer of jurisdiction under the Small Debts Act seems to have been an afterthought, and the manner in which it is sought to be carried out in this bill fur-

nishes another illustration of the absence of consideration, and want of practical knowledge, evinced by those who have unfortunately had sufficient influence to induce the legislature to adopt so many ill-advised measures. The jurisdiction of the Court of Bankruptcy, under the 8 & 9 Vict. c. 127, was in a great degree superseded by the County Courts Act, (9 & 10 Vict. c. 95,) which in effect confined it to cases in which judgment may still be obtained in the superior courts, for a sum not exceeding 20*l*. In those cases, under the present bill, the jurisdiction is divided between the Court for the Relief of Insolvent Debtors and the County Courts, in the same manner as the jurisdiction in insolvency. One result produced by this arrangement is somewhat anomalous. The judges of the County Courts are entrusted with a power—which the judges of the superior courts are expressly deprived of,—to give effect to the judgments of the superior courts by committal. The judges of the superior courts may be called upon to discharge a debtor who has been arrested upon a judgment obtained in one of the superior courts for a debt not exceeding 20*l*., but they have no power to order such a debtor to be detained in custody. The judges of the County Courts, however, have authority under this bill, conjointly with the 8 & 9 Vict. c. 127, to commit a debtor, against whom judgment has been signed in one of the superior courts for a debt under 20*l*., for any period not exceeding forty days.

An easy method of evading the penal consequences, and defeating the operation, of the 8 & 9 Vict. c. 127, is, we presume, unintentionally suggested by the provisions



of the new bill. The 8 & 9 Vict. c. 127, s. 1, provides that the creditor may obtain a summons from any Commissioner of the Court of Bankruptcy, or any Court for the Recovery of **Small Debts**, "**within the jurisdiction of which such debtor shall reside or be.**" The bill under consideration, however, provides, that the defendant against whom a summons issues "shall have resided for six calendar months next immediately preceding the suing out of any such summons," within the district of the court issuing the summons. The clause by which this uncalled for alteration is effected, and which is numbered five in the printed bill, is as follows:—

"That from the time this act shall commence and take effect, the Court for the Relief of Insolvent Debtors in England, and the commissioners thereof, and the judges of the county courts aforesaid, shall have jurisdiction in all matters of insolvency and debt under the aforesaid act, in manner following; (that is to say,) the said court for the relief of insolvent debtors, and the commissioners thereof, in all cases in which the insolvent, in cases of insolvency, or the defendant, in the case of any summons issued under the aforesaid act for the better securing the payment of small debts, shall have resided for six calendar months next immediately preceding the time of filing his petition, or of the suing out of any such summons aforesaid within the counties of Middlesex or Hertford, or within such parts of the counties of Kent, Surrey, Sussex, and Essex as do not exceed the distance of 20 miles from the General Post-office, to which district the jurisdiction of the said court and the commissioners thereof under the aforesaid acts is hereby restricted, and the judges of the county courts aforesaid, in all cases wherein the insolvent or defendant shall have resided elsewhere, and shall have resided for six calendar months next immediately preceding the time of filing his petition, or the suing out of any summons within the district of the judge of the court to which such insolvent shall prefer his petition, or to which any plaintiff may apply for any summons as aforesaid, and that every commissioner of the court for the relief of insolvent debtors, and every judge of the county courts aforesaid, shall, from and after the time this act shall commence and take effect, have and exercise, in the prosecution of such petitions and summonses filed and issued in such courts respectively, the like power and authority in all respects under the aforesaid acts as the commissioners of her Majesty's Court of Bankruptcy and district courts of bankruptcy have heretofore had and exercised, on the presentation of petitions of the insolvent debtors, and on such summonses as aforesaid under such acts, except as hereinafter otherwise provided, and shall each of them, singly, be and form a court for every purpose under this or the aforesaid acts; and that every commis-

sioner of the said court for the relief of insolvent debtors shall henceforth, singly, be and form a court for every purpose under all acts now in force or which may hereafter be in force relating to insolvent debtors."

If this clause stood, without any further provision, the difficulty suggested as to summonses issued against judgment debtors, under the 8 & 9 Vict. c. 127, would exist with respect to insolvent debtors. An insolvent who did not reside in one place for six months next preceding the date of his petition, would not have a *locus standi* as an insolvent petitioner in any court. This appears to have been foreseen, and is attempted to be provided for, though we will not take upon us to say effectually, as regards insolvent debtors, by the 7th section, which is in these words:—

"Provided always, That if any such insolvent shall not have so resided for six months in any one place as aforesaid, then the jurisdiction aforesaid in matters of insolvency shall be vested either in the court for relief of insolvent debtors in London, or in such one of the said county courts as the said court for the relief of insolvent debtors shall from time to time order."

There is no similar provision, nor any other provision, as to the jurisdiction under the Small Debts Act, and, as already stated, the consequence will be, if the bill passes in its present form, that a judgment debtor under 20*l.*, who accidentally or intentionally changes his place of domicile so as not to reside at any time for six months in any district, will be altogether exempted from the operation of the act. Why a fraudulent or contumacious debtor, shifting his place of residence, should be placed in a more favourable position, and not subjected to the punishment that awaits one who is not of a migratory habit, those who have framed the bill can best explain!

The latest edition of the bill retains the clause (numbered 11) authorising the Lord Chancellor to give directions for sittings of the Court of Bankruptcy elsewhere than in London, although a similar authority is already conferred upon that functionary, in nearly the same words, by the 7 & 8 Vict. c. 96, section 44. It is more remarkable, and much more objectionable, that no provision is introduced to avoid the palpable absurdity already pointed out, (*ante*, p. 186,) of calling upon the Commissioners for the Relief of Insolvent Debtors to administer two distinct, and in some respects, adverse, systems of Insolvency Law under the same roof, and it may be within an hour, the in-

solvent petitioner being left to select which system he most approves of, and the court having no voice in the selection.

We are glad to observe, from various articles which have appeared in the daily prints, that this measure begins to attract public as well as professional attention, in some degree proportioned to its importance; and we still indulge the hope, that its glaring defects and omissions may be discovered in sufficient time to prevent the mischievous consequences to be apprehended from giving it precipitately and inconsiderately the force of law; and that the whole subject may be allowed to stand over until an opportunity arrives for mature deliberation.

### ILLEGAL COMMITMENT UNDER THE SMALL DEBTS ACT.

THE case *Ex parte Thomas Kinning*, brought under the consideration of the Court of Queen's Bench, and subsequently of the Court of Common Pleas, by *habeas corpus*, during the last term, affords another remarkable example of the total absence of ordinary foresight exhibited by those who undertake the duty of framing modern acts of parliament.

The statute 8 & 9 Vict. c. 127, "for better securing the payment of small debts," our readers will recollect, passed towards the close of the session of 1845, and was generally understood as intended to afford a compensation to the smaller class of traders, for the protection of which they were suddenly deprived, by the act of the previous session, abolishing arrest in execution for debts under 20*l*. The first section of the Small Debts Act provides, that a creditor obtaining judgment in respect of a debt under 20*l*., may summon the debtor before a Commissioner of Bankrupts, or the judge of any Court for the Recovery of Small Debts, within the jurisdiction of which the debtor may reside, and on the debtor appearing he may be examined as to his property or means of payment, and it shall be lawful for such commissioner or judge to make an order on the debtor for the payment of his debt by instalments or otherwise, and if he appears to have the means of paying the same by instalments or otherwise, and shall not pay the same at such times as the commissioner or judge shall order, then it shall be lawful for such commissioner or judge to order such debtor to be committed for any time,

not exceeding forty days, to the common gaol, &c.

A person named Townley, having recovered a judgment for 19*l*. 19*s*. in the Sheriffs' Court of London, against Thomas Kinning, summoned him under the section above referred to, before Mr. Bullock, the judge of the court, and it appearing to that learned gentleman that the defendant was in a situation which enabled him to pay the debt and costs by instalments, an order was accordingly made, in the usual form, for payment by instalments of 2*l*. per month, and the defendant having made default in the payment of the first instalment, this same learned judge made an order for his commitment to Whitecross Street prison, for the space of forty days from the time of his arrest.

The gaoler's return to the *habeas corpus* set forth the warrant of commitment by the judge of the sheriff's court, and it was urged on behalf of the prisoner, that the commitment was bad, because it did not appear on the face of the warrant that the defendant had been summoned previous to his commitment to show cause why he should not be committed. It was conceded, that if the order for committal was to be regarded in the nature of a judicial proceeding, it was invalid, because it did not appear that the defendant had an opportunity of being heard against it; and the contention was, whether the judicial discretion was not completely exercised when the defendant came before the judge on summons in the first instance and the latter ordered payment of the debt by instalments.

The Court of Queen's Bench was divided upon the question thus raised; Lord Denman and Justice Erle being of opinion that the return was sufficient, whilst Patteson, J., and Coleridge, J., were of an opposite opinion. Lord Denman and Justice Patteson both remarked upon the looseness and uncertainty with which the act was drawn up, and the latter pointedly observed, that the person who framed the statute evidently had forgotten that when a debt was ordered to be paid by instalments, the period fixed for payment of the last instalment might be at a considerable interval after the making of the order, and that many circumstances might arise in that interval which would enable the debtor satisfactorily to account for his default. As the Court of Queen's Bench was equally divided on the matter, the prisoner was remanded by that court; but the case was

brought immediately afterwards, by *habeas corpus*, before the Court of Common Pleas, and the judges of that court unanimously agreed with Justices Patteson and Coleridge, that the committal was bad, mainly upon the ground disclosed in the judgment of those two learned judges, that the order to imprison was a judicial act, involving two questions,—1st, whether the defendant ought to be imprisoned? and 2ndly, if he ought to be imprisoned, whether it should be for forty days or any shorter period? It was not consistent with the general principles of law that questions of such importance, in which the subjects' liberty was concerned, should be determined without affording the party more immediately interested an opportunity of being heard. Upon these grounds the return to the *habeas corpus* was held to be insufficient, and the prisoner was ordered to be discharged from custody.

Justice Erle, in his judgment, adverted to the importance of the question raised in "Kinning's case," inasmuch as a provision was to be found in the County Courts Act<sup>a</sup> precisely corresponding with the first section of the 8 & 9 Vict. c. 127, and if the committal in "Kinning's case" was bad, committals by the order of the judges of the County Courts, would be open to a similar objection. As a majority of six judges to two have determined that the committal in "Kinning's case" was invalid, it follows that when a judge of the County Court orders the payment of a debt by instalments, and there shall be a default of payment, the judge will not be authorised to make an order for the imprisonment of the defendant, until he is again summoned to show cause why he should not be imprisoned, and as we have already seen, the summons in such case will not be effectual, unless it has been personally served on the defendant.<sup>b</sup> There is no doubt that the effect of this decision will be, to diminish the efficacy of the cheap and summary method of adjudication in respect of small debts contemplated by the late acts of parliament. We cordially concur, however, in the sentiment so well expressed by Justice Coleridge, in Kinning's case, that a deliberate and careful investigation must always necessarily be attended with some expense, and that the courts ought not to be deterred from as-

serting legal principles, because their application might be attended with some inconvenience. In such cases it is the province of the legislature to find a remedy for the evil.

## THE HOUSE OF COMMONS COSTS TAXATION BILL.

THIS bill has been amended in the following particulars:—

1. The retrospective provisions are omitted, and it will now operate only on the business of future sessions of parliament.

2. As the bill was originally brought in, a taxation was to take place in every instance. The client, however well satisfied with his solicitor, was compelled to incur the expense of taxing his bill. This has been altered.

3. The authority to the Speaker to appoint a taxing officer remains, with power to the Speaker to prepare a list of charges to be the utmost charges thenceforth to be allowed upon any such taxations in respect of the several matters therein specified. But the following addition has been made:—"Provided always, that the said taxing officer may allow all fair and reasonable costs, charges, and expenses, in respect of any matter not included in such list."

4. The power to call for books and papers is also retained. But the power to take a general account has been expunged.

No application to tax can be entertained after verdict, nor after the expiration of six months from the delivery of the bill of costs. But the Speaker is empowered, after the expiration of the six months, if he shall think fit, on receiving a report of *special circumstances* from the taxing officer, to direct a bill to be taxed.

6. An appeal from the taxing officer is given by memorial to the Speaker within 21 days after the taxing officer's report; and the Speaker may refer the report back to the taxing officer. No other appeal is allowed.

7. The report of the taxing officer, with the Speaker's certificate thereon, is to be conclusive as to amount, and to have in any action the effect of a warrant to confess judgment, unless the party charged shall have pleaded that he is not liable, in which case the certificate is to be conclusive as to the amount which shall be payable by the defendant in case the plaintiff shall recover a verdict.

Many of the objectionable provisions in

<sup>a</sup> See 9 & 10 Vict. c. 95, sections 98 to 101 inclusive.

<sup>b</sup> Vide Leg. Obs. vol. 33, p. 459.

the original bill have thus been removed ; but the Speaker is not limited in his choice of a taxing officer : he may appoint a barrister, or an attorney, or an officer of the house, or any one else. There is no doubt that the right honourable gentleman will endeavour to make a good selection : we hope he will succeed, and that justice will be done both to client and solicitor.

## NOTICES OF NEW BOOKS.

*The Statutes and Orders relating to Practice and Pleading in the High Court of Chancery, from 1813 to Easter Term, 1847, classified according to the respective proceedings in a suit ; with a Time Table and Notes.* By SAMUEL SIMPSON TOULMIN, Esq., of Gray's Inn, Barrister-at-Law. London: Sweet. 1847. Pp. 388, xxii.

MR. TOULMIN observes in his preface, by way of apology for the publication of a collection of statutes and orders relating to Chancery practice, in addition to the works already in existence, that the utility of the present work consists in the *arrangement*, by which all the modern enactments and regulations now in force are classified under the separate heads to which they are applicable ;—each class, where necessary, being divided into sections and subdivisions, so that all recent alterations affecting any particular point may be seen at one glance.

This is an exceedingly useful method in a work on the practice of the court, for the saving of time, by readily finding whatever may be required, is of the greatest moment both to counsel and solicitors actively engaged in the midst of pressing business. The convenient arrangement which Mr. Toulmin has pursued was probably suggested to him during his practice as a solicitor, and which he now, on his call to the bar, successfully brings to bear in the present work.

The collection of *statutes* commences with the act 55 G. 3, c. 24, by which a Vice-Chancellor of England was appointed. The statutes prior to that time are deemed by Mr. Toulmin of little importance in his present work. The *orders* comprised within it commence in 1814. He considers that the earlier orders are for the most part obsolete and inconsistent with the modern practice of the court, and he has therefore adverted to them only so far as necessary in the notes. He has also pro-

perly omitted all the orders of a temporary nature, and (except in a few instances) the orders relating to the suitors' funds, as being of no practical utility. All the other orders will be found in the appropriate parts of the work ; but such of them as have been discharged expressly are placed in an appendix. It is observable, however, that, besides the orders so discharged *nominatim*, all other orders and parts of orders *inconsistent* with the orders of the 8th May, 1845, were discharged by the first order of that date. Such inconsistent orders are included in the body of the work, as the compiler was unwilling to take upon himself the responsibility of omitting any orders or parts of orders on the ground of their coming within that provision.

This is a difficulty which the compilers of books of practice must unavoidably encounter, and we should have been glad if Mr. Toulmin would have endeavoured to overcome it. We hope he will in a new edition make the attempt. It would have been desirable, in making general orders so extensive as those of May, 1845, if the judges could have satisfactorily embodied therein all the previous orders intended to be retained, and thus have formed a code of practice, repealing all former orders. The time will come, we trust, when the judges will direct some competent officers to prepare such a code ; and the present and other similar works will be of great service in the execution of the task.

The following is a summary of the contents of the volume :—

1. General orders. 2. The judges of the court. 3. The officers of the court. 4. The records of the court. 5. Solicitors. 6. Parties to the suit. 7. Informations and bills. 8. Service of notices and other proceedings. 9. Subpœna. 10. Service of copy bill. 11. Contempts. 12. Pro confesso. 13. Appearance. 14. Traversing note. 15. Demurrers and Pleas. 16. Answers and exceptions for insufficiency. 17. Preliminary inquiries. 18. Dismissal of bill. 19. Joining issue. 20. Evidence. 21. Setting down and hearing causes. 22. Decrees and orders. 23. Rehearings and appeals. 24. Issue at law. 25. Proceedings in the Master's office.—Reports and exceptions thereto. 26. Motions and petitions. 27. Injunctions and proceedings in the nature of injunction, including stop order. 28. Receiver. 29. Abatement and revivor. 30. Exceptions for scandal and impertinence, and proceedings thereon. 31. Election to proceed at law or in equity. 32. Cross bill of discovery. 33. Time. 34. Costs. 35. Fees. 36. Transfer of equity

jurisdictions to the Court of Chancery. 37. Expenses of draining settled estates. 38. The sale and purchase of lands for public undertakings. 39. Joint-stock companies.

The first Appendix contains statutes abolishing offices of the court. The second comprises orders discharged, superseded, suspended, or amended by other orders.

Under each head of the work Mr. Toulmin has quoted the statutes chronologically, and then the orders either chronologically or according to the usual proceedings in a suit; and whenever a section of a statute or an order could be conveniently divided, so much of it only is inserted as is applicable to the particular subject, but in general the whole of each section or order is contained in some part of the book, and may be found by referring to the Tables of Statutes and Orders. Each section and order is given verbatim, except in some instances where an abstract was considered sufficient, or where a reference is given to another part of the work; and in all such cases the distinction is apparent, or is denoted by brackets, and is also pointed out in the Tables of Statutes and Orders; but formal recitals, &c., have generally been omitted.

#### FORGERY OR ALTERATION OF A WRIT BY AN ATTORNEY.

AN attorney has been committed for trial by the magistrates of Sheffield, upon a charge of having forged a writ.

It appears that the attorney had been instructed in November last, by the trustees of a benefit club, to issue a writ against a person who had failed to pay the money which he had borrowed of the club. Before the writ had arrived, the defaulter made arrangements for payment; but the attorney said that he had received the writ on the day following that on which the arrangements were made, and he was consequently paid 25s. costs. When the sum was paid, he was required to deliver the original writ; and with some reluctance he handed over a writ in which several erasures were discernible. The writ was suspected to be a forgery, and the attorney was afterwards apprehended.

A clerk of the Queen's Bench Office, London, stated, at the last examination, that no præcipe for such a writ had been issued in November last; and he believed that the præcipe for the writ produced in court had been issued in January, 1846.

The prosecutors offered to abandon the proceedings, if the attorney would produce a letter from his London agent enclosing the writ, or otherwise show that he had really received it; but he was unable to offer any proof whatever.

## LEGAL EDUCATION REPORT.

### ATTORNEYS AND SOLICITORS.

WE last week quoted from the report of the commissioners containing their conclusions with regard to *Barristers*, (see p. 188, *ante*.) We now proceed to the *Solicitors*. The committee observe, that they have been treated more as mechanical agents for carrying out the practical processes of the profession; and as the future chemist and apothecary is bound an apprentice, so is the future solicitor articulated as a clerk, for the purpose of learning what has been too much considered in both cases as matter of mere manual dexterity. Hence, whatever higher or more comprehensive instruction he has been enabled to acquire, he owes it almost exclusively to himself. The aid he has received from bench or bar amounts very nearly to nothing. Of late, these individual and isolated efforts have taken a more co-operative character, and societies have been founded and supported by the body itself, for the joint purpose of watching over conduct and providing education for this branch of the profession. To each of these particulars it will be necessary to advert more specifically.

"Originally, the attorneys were required to belong to the Inns of Court, or the Inns of Chancery: 'There is a rule as late as the reign of Queen Anne,' 'requesting them to come to commons.' 'After that time the Inns appear to have made a number of regulations; whether the numbers entering for the bar were too great, or what the cause of it was I am unable to say, but of late years, within the last 40 or 50 years, a rule has been made at all the Inns of Court, prohibiting any gentleman studying for the bar, who is an attorney, or under articles of clerkship. Since that time they have ceased to belong to those Inns, except for the purpose of holding chambers.' The Inns of Chancery are at present five: Clifford's Inn, New Inn, Clement's Inn, Barnard's Inn, and Staple's Inn. Thavies Inn and Furnival's are no longer societies, the property is in the hands of individuals. The Inns of Chancery are now entirely under the government of attorneys, though this does not appear to have been the original constitution of the society. Their funds are inconsiderable, not much more than sufficient to pay the expenses of their establishments, derived principally from the rent of chambers: many of the chambers, it appears, have been purchased by individuals; the proceeds of such as remain in the hands of the society, with fees of admission, constitute their entire income. It is now quite clear how far the Inns of Chancery had for object the communication of in-

struction, or the acquisition of legal knowledge. There have been occasional lectures at some of the Inns of Chancery as well as at the Inns of Court. The Inns of Court send to some of them a reader, who delivers, it appears, only one or two lectures, not to all of them, but to some of the minor inns only; but this is not intended for purposes of instruction, but merely in compliance with a matter of form, 'to enable the reader himself to be qualified in his progress to the bench.' It evinces certainly, as similar forms in the Inns of Court, traces of an earlier application of these inns, as well as the Inns of Court, to purposes of instruction; but the reality, if it ever existed to any extent, has long since passed away, and no instruction of any kind has been given for a great many years. The only use of these inns appears to be the continuance of commons and chambers, which latter, however, are not confined to attorneys, but may be held, in the quality of tenants at least, by strangers.<sup>a</sup>

'As a substitute for this deficiency of instruction in the Inns of Chancery, or rather as a necessary accompaniment to all theoretic instruction, must be considered the knowledge of the practical part of his profession (no doubt of great importance,) which it is intended the solicitor should acquire, through the system, and during the period of apprenticeship. This system, as now carried on, is analogous to that pursued by barristers when attending on conveyancers, special pleaders, and equity draughtsmen; with this difference, that in the case of the solicitor such course is compulsory by act of parliament, in order to qualify for admission to the profession; in the case of the barrister, though usual, altogether optional. The period required by the act to be spent under articles with the solicitor is five years. Previously to admission to the office no examination is necessary; no particular amount of knowledge of any description is required, it appears, by the bench or by the solicitor. The course of studies pursued in the office is entirely left to the choice of the pupil; the principal may direct, but cannot in the least degree compel any course to be pursued. Indeed, it is a general complaint on the part of the articulated clerks themselves, that very little attention is paid by the solicitor to the direction of their studies; in fact, it can scarcely be expected from solicitors in any degree of practice; their time is so much occupied with the duties of their profession that they can scarcely take up the points which are requisite for looking after their education. There is no prescribed course of occupation during the day: the solicitor may perhaps direct a certain draft to be drawn, or a certain paper to be copied; and if there be nothing of that kind going on, the articulated clerk is supposed to read. Even the drawing up of papers, which presupposes some share of intellectual exercise and application, is altogether unusual; it very much depends upon the articulated clerk himself; he is almost entirely left to his

own discretion; and therefore, unless he qualifies himself for that purpose, nothing will be put into his hands beyond what any person could do, namely, copying. There is no attendance in university, college, or any other institution, nor any course of legal lectures, insisted on: his very attendance at the courts of law is merely in execution of duties of a purely formal nature imposed, nor is any for his own use, by the solicitor to whom he is apprenticed: so that, without exaggeration, it may be stated, that, as far as any course of legal education is in question, the apprenticeship of the articulated clerk is generally occupied in very little more than the learning and applying of technical terms, unless indeed by individual exertion he may qualify himself for duties of a higher order. Some sort of check has been sought to be put to this neglect by the enforcement of a final examination previous to, and as the condition for, admission to the profession; but this examination, either as to quantity or quality of knowledge required, mode in which it is insisted on, or precision with which it is tested, appears to be altogether inadequate to the purposes for which it is presumed it was designed. Six months previous application would, in the opinion of Mr. Payne, be quite sufficient to enable an ordinary student to pass. The questions refer to forms and principles, though the former considerably predominate. The examination is wholly written, and seldom lasts for more than a day. There is no inquiry made from the candidate as to previous study, beyond the mere query, unattended with any consequences, of 'What books have you read, and what lectures have you attended?' nor is any notice taken of the more or less degree of application evinced during his apprenticeship.<sup>b</sup> So far, then, as the mass is concerned, no guarantee whatever exists for that competency which the public have a right to demand. A certain number, no doubt, about one-tenth, endeavour to supply these deficiencies, by attendance at barristers' and conveyancers' chambers, for about one year of their apprenticeship; but as this exempts them from all duties to the solicitor, it must be with his consent, either stipulated for in the articles themselves, or obtained by subsequent arrangement. Solicitors, in general, act liberally in this particular, and this concession, if so it may be called, goes farther to secure to the pupil the acquisition of some sort of legal principles than any other part of their course.<sup>c</sup> The profession, generally, have so felt these defects, that, with a very laudable zeal, seconded by much discretion and intelligence, they have endeavoured, under different forms, to provide, by individual exertion, a more efficient course of instruction for the young pupil; with this view, and especially in consequence of the rule made at all the Inns of Court, within the last 40 or 50 years, prohibiting any gentleman studying for the bar who is an attorney, or under articles of clerk-

<sup>a</sup> See Mr. Maugham's evidence.

<sup>b</sup> See Mr. Bayne's evidence.

<sup>c</sup> See Sir George Stephen's evidence.

ship, in 1827, the 'Incorporated Law Society' was founded by Mr. Bryan Holme, and many leading solicitors of the time. There was an old law society, indeed, prior to this, the immediate result of the exclusion from the Inns of Court just noticed, but they had no building nor library till the establishment of the Incorporated Law Society of 1827, gave rise to both. This society is governed by the body itself, that is, by 30 members of the society, periodically elected, called the council. The number of members now amounts to 1,400, and the annual increase is on an average from 50 to 60. The conditions are 15*l.* on admission, and an annual subscription by a town member of 2*l.*, and by a country member of 1*l.* The principal object of the society was the foundation of a library, in which they have amply succeeded; it was opened in 1831, and now contains 6,000 volumes, and is likely to increase rapidly, 400*l.* a year being applied to that purpose: the second was the establishment and maintenance of courses of legal lectures; under what conditions, and at what rate of payment, is regulated by the society. Three courses of lectures, each course comprising 12 lectures, commencing in the beginning of November, and terminating at the end of March, are annually delivered by the lecturers appointed by the society, to which it would appear others are added, so as to augment the courses altogether to five. These courses embrace most of the great departments of law; there is one on common law, another on conveyancing, a third on equity, a fourth on bankruptcy, and a fifth on criminal law. There are three lecturers, selected from the bar, and each receives a salary of 100 guineas for a course of 12 lectures. Fees are received by the society, and out of these fees the lecturers and all the other necessary expenses are paid. The members of the society have free admission, in right of their membership; there are, besides, about 200 articled clerks who are permitted to attend, and who pay 2*l.* for the whole of these several courses, the public at large paying more. These lectures are not accompanied by any examination or class instruction, nor is attendance on them tested by certificate, or are they in any way obligatory. A final examination, indeed, takes place, (to which reference has already been made,) originally under a rule of court (in 1836,) and at present under act of parliament (7 Vict. c. 73,) passed 22nd Aug. 1843. Under this act the judges are directed to appoint examiners. A rule of court determines the number, nature, and order of proceedings. There are five examiners, of whom four are solicitors, selected by the judges from the council of the society, changing in rotation every year, and presided over by one of the Masters of the three superior courts, taking it in succession, one Master from each court. They are allowed fees, under the authority of the act of parliament, on the examinations, but the examiners take no fees themselves; they allow the fees to be applied to the purposes of the society, and give their services altogether gratuitously. The

order of proceedings is as follows: all candidates are examined each term in one day. They begin at 10 o'clock in the morning, and each candidate receives a paper of questions on his sitting down (the rules of court prescribing written or printed papers, the examiners do not think themselves at liberty to put any questions *viva voce*,) and is allowed till 4 o'clock to answer them. These questions are in five departments. The candidate is required to answer in three of them, two of which must be in common law and equity; he may select conveyancing, bankruptcy, or criminal law for the third. There is no examination for honours. The examiners do not conceive themselves authorised under the act of parliament or rules of court to confer honours. The certificate of examination merely bears that the candidates passed are fit and capable of acting as attorneys; the degree of fitness or capacity the examiners do not consider themselves warranted to determine. The examination thus serves merely as a guarantee against absolute incompetency. It is merely a question whether the candidate shall pass or be postponed. In 1834 the candidates were considerable; in 1837 the numbers passed were 424; the numbers postponed 15; in 1845 the numbers examined were not more than 318. The total numbers postponed for the last 10 years amount to 200. When these numbers are compared with those attending upon the lectures, it will be seen that a large portion of the candidates can scarcely have availed themselves even of that provision for instruction. When the institution was first established, and these lectures instituted, the attendance amounted to about 300; they have now decreased to 200. The cause for decrease in both instances has been in some measure accounted for by reference to extraneous causes, though, as far as regards decrease in the annual admissions to the profession, the examination itself, by excluding a certain proportion of candidates, the totally unfit, may have also had its influence.<sup>d</sup>

"There are other institutions established for similar purposes, and of analogous constitution to the Incorporated Law Society, to be met with in other parts of England, to the number at least of 30, if not more. At the head of these, and as the model from which the other societies seem to have derived their regulations, may be placed the 'Manchester Law Society.' These societies are altogether voluntary, and have originated from the zeal and exertions of a few respectable individuals. The Manchester Law Society appears to have originally been projected and constituted for purposes of a professional nature, for the preventing of improper practices, and watching over such legislative and other proceedings as might affect the profession and the public. The society later extended its views to educational objects. Many of the principal members thought it advisable to give lectures to the articled clerks, and dur-

<sup>d</sup> See Mr. Maugham's evidence.



ing the years 1844, 1845, and 1846, lectures were so given and are now continued. These lectures are usually furnished by the members of the society, with the assistance of one or two barristers, who have been kind enough to volunteer; they are wholly gratuitous. They purport to embrace commercial law, the law of evidence, conveyancing in every department, criminal law, and legal and moral training, fitting the younger branches of the profession for respectably supporting their position. A dozen are given each year. During the present, there have been, on the Law of Mortmain and Charitable Uses, which may be said to be a part of conveyancing, two; on the Law of Settlement, four; on the Law of Mortgage, three; on the Law of Landlord and Tenant, one. They do not propose to follow out the same in continued courses, but to take up such subjects as are of more general or immediate interest, in detached lectures, unaccompanied by private class instruction, or special or general examination. The attendance is described to have been remarkably good. The members of the society, chosen by ballot, amount at present to 200, comprising nearly all the respectable solicitors in Manchester. The other societies spread over various parts, but especially the north of the kingdom, do not materially differ in constitution or object from this of Manchester, though inferior in the efficiency with which their arrangements are carried out.\*

"The education, legal and general, of the solicitor is still more neglected in Ireland than in England. The opportunities presented are fewer, and less advantage taken of such as are found to exist. As in England, the system of apprenticeship prevails, with few even of the benefits derived from it in that country. The young apprentice, previously to his being articulated, is obliged to state in his memorial at what school he has been educated, and what Latin and Greek works he has read. No further inquiry is made as to how he has read them, or what he has retained. If he has graduated in the university, his apprenticeship is indeed shortened to three years from five, (the usual period,) implying thereby the advantage of previous education, and offering a certain inducement to its acquisition, but implying it in rather an inconsistent manner, as if the period of apprenticeship were applied to such purpose, or indeed to any other than the familiarising the apprentice, lettered or unlettered, with mere technicalities.

" 'The young apprentice,' says Mr. Mahony, 'generally goes, if he can, or if his parents are able to afford it, to the first office; that office is full of business, and the heads of it have no time to give him instructions; and in fact they do not do it.' The young man has an opportunity of doing business if he thinks fit, but it is entirely in his own hands; there is no system of instruction whatever. Even if he attends to his profession, his study is entirely limited to the technicalities and forms of law. In the first

year he is occupied in merely copying; he acquires a habit of drawing law forms; as he advances, he goes through the details of the business, and he at last comes to be what is called an out-door apprentice, that is, doing court business. This information is entirely technical; he has no opportunity of learning upon what principles these technicalities are founded; it is not the habit of his master to lecture him, or to assist him in any way whatever. When he becomes an out-door apprentice, he is employed in the daily business of the courts, attending motions and causes at trial, and filing pleadings, but with no farther aid in acquiring information or practice than what may be furnished by his own observation and industry. The operation of this want of instruction and control is forcibly depicted by Mr. Mahony. He states, that in his own person he experienced its injurious consequences, and has since seen similar results in the character and conduct of others. 'I have no hesitation,' says he, 'to tell the committee, that when I was sworn in as an attorney, I was utterly ignorant; I spent my time idling, and it was not until the necessity arose for my devotion to my profession for my own interest, that I began to acquire knowledge.' There are many cases, however, in which this late reform does not take place; many cases in which the idle apprentice becomes and continues the idle solicitor throughout life. 'I have had, for instance,' continues the same experienced witness, 'in my own office, from time to time, a great number of apprentices, and I do not think that, (with the exception of two or three at most,) any of them practised; they had the very best opportunities of learning their business there, all varieties of business, perhaps, but they never have practised; they have gone away completely ignorant, and since have changed their professions, and others are in no profession at all.' To correct or remedy these defects, there is no examination; no certificates beyond the usual certificates of attendance at dinners for the specified number of terms in the English and Irish Inns of Court; no rewards, no honours. Nor does it appear that much opportunity is given or effort made on the part of the profession, or the apprentice himself, to supply these wants. The pupil seldom is seen to attend the lectures of the university, limited as they are, nor, as in England, a conveyancer's or barrister's office. It is true, indeed, some slight knowledge and mechanical quickness may be gained from the circumstance, that in Dublin, as Mr. Latouche states, conveyancing is generally prepared by the attorney: 'The first drafts of the deeds are prepared in the solicitor's offices, and are sent to the counsel for revising;' but this of itself is only another evidence of the gross neglect allowed to prevail. Questions of great nicety, reposing upon important principles, and those principles requiring great judgment and knowledge, and therefore great study and thought for their application, which in England are reserved, on this conviction, to the higher branch of the profession, who specially devote them-

\* See Mr. Taylor's evidence.



selves to such studies, are devolved without concern to the ordinary solicitor throughout Ireland, whose means and zeal for the acquisition of legal knowledge are, as we have seen, confessedly inferior to those possessed by the solicitor in England. Nor is this individual neglect made up by any public effort. A society there is, constituted for the benefit of the profession, under the name of the Attornies' Society, but not only is it purely voluntary, like that of Manchester and other law societies already noticed in England, but unlike those societies, it in nowise contemplates the education of its members; it is a mere society for the purposes of a library, and for holding meetings. The sum total, therefore, of an Irish solicitor's professional education, seems to amount to just that quantity of mere formal experience (it would be hard to dignify it with the name of knowledge) which he may pick up, if he be so disposed, in doing the routine business of his master in the office, or in the courts."

## REPORT OF COMMISSIONERS IN LUNACY.

*Office of Commissioners in Lunacy,  
19, New Street, Spring Gardens,  
30th June, 1846.*

IN pursuance of the 88th section of the act 8 & 9 Vict. c. 100, the commissioners in lunacy beg to submit to the Lord Chancellor the annexed statement, containing a list of the various County asylums, hospitals, and licensed houses receiving lunatics in England and Wales, and setting forth the number of insane patients in each at the date of the last visit of the commissioners.

In the discharge of their official duty during the last year, many circumstances have come under the observation of the commissioners which they propose to make the subject of a special report hereafter. At present, the commission has been in operation only between 10 and 11 months; and the various returns and reports to which the commissioners must resort, in order to enable them to render a full and detailed account of the several matters entrusted to their care, are imperfect, and apply only to a section of the year.

They propose, therefore, as soon as practicable after the first year of their labours shall have terminated, and they shall have obtained more ample materials, to submit to the Lord Chancellor a more minute report of all such matters coming under their cognizance as they shall consider worthy his especial notice. In the meantime they deem it sufficient to advert in general terms to the condition of the various lunatic establishments, and also to some of the more prominent subjects to which their attention has been directed.

The condition of the asylums, hospitals, and licensed houses throughout England and Wales

is, generally speaking, in a satisfactory state. In some cases, however, the commissioners have suggested improvements in ventilation, or additions to the clothing or comforts of the patients; in others, a better classification, an increase of attendants, and a relaxation of restraint. In two instances, where they considered the supply of food insufficient or of an unfit nature, they have felt themselves bound to exercise the powers vested in them by the 82nd section of the act, and have prescribed a fixed dietary for pauper lunatics; in another case, they have thought it right to inspect one of the licensed houses in the provinces, at night, in pursuance of the powers given by the 71st section of the act; and in a third, they have entered into a minute and laborious inquiry, in reference to certain alleged abuses which, as they were informed, existed in one of the large provincial asylums.

No case has occurred in which the commissioners have themselves been called upon actually to discharge any person confined as a lunatic; but they have repeatedly promoted and been the cause of the liberation of patients whose apparent convalescence justified, as they thought, their interference.

The 86th section of the act has been found to be useful, and many cases have occurred in which the commissioners have been induced to authorize the removal of patients, for a limited time, to the sea-side or other places, for the benefit of their health. The commissioners have also occasionally exercised the power given to them by the 85th section, by ordering the admission to patients of their relations and friends; and after a careful examination of many of the registers and other books kept by the medical attendants of licensed houses, they considered it expedient to put in force their authority, under the 60th section; and on the 9th day of January last issued an order, containing directions for the form of a "case-book," and which, if duly followed, will place upon record the history, the character of the disease, and the treatment of every lunatic patient thereafter confined in any of the hospitals or licensed houses in the kingdom.

The commissioners have, from time to time, received communications from various persons, that lunatics have been received in houses that had not been licensed. In each of these cases the commissioners made inquiries into the subject, but they have not (except in one instance) discovered that any wilful breach of the law had been committed.

In the one instance adverted to, they thought it expedient to institute a prosecution against the offending party, who pleaded guilty to the indictment. In another instance, their inquiries induced a person receiving two lunatics to apply for a license, which the commissioners did not think themselves justified in refusing, the circumstances of the case being such as to give rise to some doubt as to the party's liability, and to acquit him apparently of having knowingly violated the act.

In reference to other powers of the act, the

\* See evidence of Mr. Mahony and Mr. La-

commissioners beg to state, that they have repeatedly made inquiries, pursuant to the 94th section, in cases where they supposed that the property of lunatics was not duly protected, and have reported thereon to the Lord Chancellor accordingly.

The members of the private committee have also visited various single patients under the 92nd section of the act, and have made many inquiries, with the view of ascertaining the propriety of their confinement, and also whether they were subjected to proper medical treatment, and enjoyed such comforts as their income entitled them to expect.

The commissioners have found it scarcely practicable in many instances to compel medical practitioners, when certifying as to the insanity of private patients, to set forth, with any degree of care or correctness, the facts upon which their opinions have been formed; and the exceeding inaccuracy of numerous certificates has added materially to the amount of correspondence in which the commissioners have been engaged.

The certificates for the reception of pauper patients have been more accurate; but considerable difficulty has arisen, as the commissioners understand, in thinly populated districts, from the necessity of obtaining the opinion of a medical practitioner, not being the medical officer of the union or parish to which the lunatic pauper belonged.

They consider it desirable, as far as is consistent with the liberty of the subject, that every facility should be afforded for enabling lunatics to receive the benefit of proper medical treatment in an asylum as soon as possible after the commencement of their disorder. The number of pauper lunatics on whose behalf admission into asylums is now required, is so large, and both the public and private lunatic establishments are now so deficient in the means of accommodation, that the commissioners have been induced to license a large house in the neighbourhood of London; and they have also, as a temporary asylum only for pauper lunatics, licensed a part of one of the large metropolitan workhouses.

In conclusion, the commissioners beg to state that, as part of their duty, they have, up to the present time, visited 302 workhouses, and that a report thereon is now in preparation, and will be shortly laid before the Poor Law commissioners, conformably to the 111th section of the act; and that they have also received, and taken into their consideration, various plans and estimates relative to county asylums (submitted to them under the 28th section of the act 8 & 9 Vict. c. 126,) and have made various reports thereon to her Majesty's Principal Secretary of State for the Home Department.

(Signed,) **ASHLEY, Chairman.**

## APPROACHING DISSOLUTION OF PARLIAMENT.

It seems probable that the state of public business before parliament will delay the prorogation for a few days beyond the time recently intimated. Instead of the 15th, it is said the day will be the 22nd, or thereabouts. The exact time of the dissolution of parliament seems partly to depend on the state of the harvest.

So far as we have yet heard, all, or nearly all the members of the Bar who are in the present house will be again returned. Several new candidates are also spoken of, namely, Mr. Serjeant Shee, Mr. Cockburn, Mr. Bethell, and Mr. Rolt. Besides the few Solicitors in the present parliament, or members who formerly practised in that branch of the profession, it is confidently rumoured that several practising solicitors will at all events become candidates. We wish them success. Mr. Freshfield, formerly a solicitor of first-rate eminence and ability, who was several years in the house, and retired from practice some years ago, it is expected will again come forward. Although he was called to the bar in 1842, he possesses, through his sons, a deep interest in maintaining the character and station of his former brethren, and doubtless will promote all their just and reasonable objects.

Our readers are aware from the address of the committee of the Metropolitan and Provincial Law Association, that it is intended to submit the state of the profession to Parliament. It is announced in the address that—

“To promote the redress of the public and professional grievances which have been touched upon, the committee propose to bring the general state of the profession under the consideration of parliament. In the meantime, they are taking means to collect the materials and evidence to be adduced; and they strongly urge upon every member of the profession, the necessity of contributing his aid, by expressing to the committee his sentiments on the various topics which have been noticed in the address, or suggesting others;—adducing at the same time instances in support of his opinions. The committee fully expect from these aids, and from various sources of information opened to them, to be prepared with a great body of facts ready to be established before parliament.

“The committee propose to circulate information on the past and present state of the profession, and on the manner and extent in which the public interest is thereby affected. Such information the committee conceive to be no-

cessary, not only for the public, which has at present a very superficial knowledge of these matters, but even for the profession itself, which, although the sense of injury is general amongst its members, has yet to form and mature its own opinion on many of the existing evils and their remedies.

"An investigation before parliament of the subjects referred to being an essential object of this association, it will be one of the duties of the committee to prepare the way for it, so far as circumstances will permit, by proper representations to members of the legislature, and by obtaining the assistance of some of those individuals who may be qualified to conduct the proposed parliamentary inquiry in a committee of the House of Commons.

"To further this object, and to secure, in a future parliament, a candid hearing of their appeal, the approaching general election affords to every member of the profession an opportunity of contributing, by directing the attention of candidates and representatives to the important subjects alluded to in the address."

We recommend our readers to lose not a day in enrolling their names and communicating their sentiments to the committee.

## SELECTIONS FROM CORRESPONDENCE.

### REGISTRY OF DEEDS.

SIR,—I have just seen the letter of J. W. D., in your number of 12th June, commenting upon my letter in your number of the 29th of May last. I confess my letter was written in haste, and consequently worded loosely, but if J. W. D. reads it again, I think he will agree in opinion with me, that the view I took was not erroneous but correct. I meant to say, if A. held land in July 1827, and had judgment duly registered against him in the Common Pleas, (and I used the words "duly entered against him, and re-registered down to the present time every five years,") and there is a purchase from A. but no search, and various subsequent sales with searches, but were against A., and I still say, as I said before, that the land is bound with the judgment against A., in the hands of T., in the month of June, 1847. J. W. D. must have assumed that it was not re-registered every five years, a point which I plainly asserted, though after the lapse of 20 years from A.'s sale, the statute, I presume, would bar A.'s judgment creditor.

A CONSTANT READER.

### COUNTY COURT COSTS.

SIR,—In reference to costs under the County Courts Act, allow me to trouble you with the following case. At the Marylebone Court the judge refused to give me any costs of attendance, on the ground that my client, the plaintiff, should have attended personally, and that the

claim, which was for 5*l.* odd, did not require professional support. My client is a sculptor, and being a foreigner could not have conducted the case himself.

AN ATTORNEY.

## CIRCUITS OF THE COMMISSIONERS.

### FOR THE RELIEF OF INSOLVENT DEBTORS.

#### Autumn Circuits, 1847.

##### HOME CIRCUIT.

Henry Revell Reynolds, Esq. Chief Commissioner.

Kent, at Dover, Friday, Nov. 5.

At the City and County of the City of Canterbury, Monday, Nov. 8

Kent, at Maidstone, Tuesday, Nov. 9.

Sussex, at Lewes, Friday, Nov. 26.

Hertfordshire, at Hertford, Friday, Dec. 3.

##### MIDLAND CIRCUIT.

John Greathed Harris, Esq., Commissioner.

Essex, at Chelmsford, Tuesday, Oct. 26.

Essex, at Colchester, Wednesday, Oct. 27.

Suffolk, at Ipswich, Thursday, Oct. 28.

Norfolk, at Yarmouth, Saturday, Oct. 30.

Norfolk, at the Castle of Norwich, Monday, Nov. 1.

At the City and County of the City of Norwich, the same day.

Norfolk, at Lynn, Tuesday, Nov. 2.

Suffolk, at Bury St. Edmunds, Thursday, Nov. 4.

Cambridgeshire, at Cambridge, Friday, Nov. 5.

Huntingdonshire, at Huntingdon, Saturday, Nov. 6.

Northamptonshire, at Peterborough, Monday, Nov. 8.

Rutlandshire, at Oakham, Tuesday, Nov. 9.

Lincolnshire, at Lincoln, Wednesday, Nov. 10.

Nottinghamshire, at Nottingham, Friday, Nov. 12.

At the Town and County of the Town of Nottingham, the same day.

Derbyshire, at Derby, Monday, Nov. 15.

At the City and County of the City of Lichfield, Tuesday, Nov. 16

Staffordshire, at Stafford, Wednesday, Nov. 17.

Shropshire, at Shrewsbury, Friday, Nov. 19.

Warwickshire, at Warwick, Monday, Nov. 22.

Warwickshire, at Coventry, Wednesday, Nov. 2

Leicestershire, at Leicester, Friday, Nov. 26.

Northamptonshire, at Northampton, Monday, Nov. 29.

Bedfordshire, at Bedford, Tuesday, Nov. 30.

Buckinghamshire, at Aylesbury, Thursday, Dec. 2.

##### NORTHERN CIRCUIT.

William John Law, Esq., Commissioner.

Yorkshire, at Sheffield, Saturday, Oct. 16.

Yorkshire, at Wakefield, Monday, Oct. 18.

At the Town and County of the Town of Kingston-upon-Hull, Monday, Oct. 25.

Yorkshire, at the Castle of York, Wednesday, Oct. 27.

Yorkshire, at Richmond, Saturday, Oct. 30.

Durham, at Durham, Monday, Nov. 1.

Northumberland, at the Moot Hall, Newcastle-upon-Tyne, Wednesday, Nov. 3.

At the Town and County of the Town of New-castle-upon-Tyne, the same day.

*Cumberland*, at Carlisle, Friday, Nov. 5.

*Westmoreland*, at Appleby, Monday, Nov. 8.

*Westmoreland*, at Kendal, Tuesday, Nov. 9.

*Lancashire*, at Lancaster, Wednesday, Nov. 10.

*Lancashire*, at Liverpool, Wednesday, Nov. 17.

*Cheshire*, at the Castle of Chester, Saturday, Nov. 20.

At the City and County of the City of Chester, the same day.

*Flintshire*, at Mold, Monday, Nov. 22.

*Denbighshire*, at Ruthin, Tuesday, Nov. 23.

*Merionethshire*, at Dolgelly, Thursday, Nov. 25.

*Carnarvonshire*, at Carnarvon, Monday, Nov. 29.

*Anglesey*, at Beaumaris, Tuesday, Nov. 30.

*Montgomeryshire*, at Welchpool, Friday, Dec. 3.

#### SOUTHERN CIRCUIT.

Charles Phillips, Esq., Commissioner.

*Berkshire*, at Reading, Friday, Oct. 15.

*Oxfordshire*, at Oxford, Monday, Oct. 18.

*Worcestershire*, at Worcester, Wednesday, Oct. 20.

*Herefordshire*, at Hereford, Friday, Oct. 22.

*Radnorshire*, at Presteigne, Monday, Oct. 25.

*Brecknockshire*, at Brecon, Wednesday, Oct. 27.

*Carmarthenshire*, at Carmarthen, Friday, Oct. 29.

*Cardiganshire*, at Cardigan, Monday, Nov. 1.

*Pembrokeshire*, at Haverfordwest, Tuesday, Nov. 2.

*Glamorganshire*, at Swansea, Friday, Nov. 5.

*Glamorganshire*, at Cardiff, Monday, Nov. 8.

*Monmouthshire*, at Monmouth, Wednesday, Nov. 10.

*Gloucestershire*, at Gloucester, Friday, Nov. 12.

*Somersetshire*, at Bath, Monday, Nov. 15.

At the City and County of the City of Bristol, Wednesday, Nov. 17.

*Somersetshire*, at Taunton, Friday, Nov. 19.

*Cornwall*, at Bodmin, Tuesday, Nov. 23.

*Devonshire*, at Plymouth, Thursday, Nov. 25.

*Devonshire*, at the Castle of Exeter, Saturday, Nov. 27.

At the City and County of the City of Exeter, the same day.

*Dorsetshire*, at Dorchester, Tuesday, Nov. 30.

*Wiltshire*, at Salisbury, Thursday, Dec. 2.

At the Town and County of the Town of Southampton, Saturday, Dec. 4.

*Southampton*, at Winchester, Monday, Dec. 6.

#### ATTORNEYS TO BE ADMITTED.

*Michaelmas Term, 1847.*

#### Queen's Bench.

##### To whom Articled, Assigned, &c.

Avis, Henry, 25, Lincoln's Inn Fields . . .  
 Allix, Wager Townley, 11, Princes' Street, Cavendish Square . . .  
 Axford, John, 4, Hanover Place, Regent's Park . . .  
 Andrews, Edward, 3, Duchess Street, Portland Place; Weymouth; and Melcombe Regis . . .  
 Allan, Edward, 50, Upper Norton St., Fitzroy Square . . .  
 Arnold, George Matthews, 83, High Holborn; and Gravesend . . .  
 Brodrick, Thomas, 35, Great Ormond Street . . .  
 Blackett, Henry, 16, Bedford Row; Islington . . .  
 Barrow, James, 1, Princes Place, Duke Street, St. James's; and Manchester . . .  
 Brandon, Gabriel Samuel, 163, Strand . . .  
 Buswell, William, 67, Upper Charlotte Street, Fitzroy Square; and Leicester . . .  
 Bramwell, Wm. Henry, Sunderland; Houghton-le-Spring; and Durham . . .  
 Baker, Isaac Palmer, 51, Liverpool Street, King's Cross; and Ipswich . . .  
 Barrett, John William, 8, Great College St., Westminster; and Wiveliscombe . . .  
 Brooke, William Henry, Dudley . . .  
 Berners, Henry, jun., 9, Mark Lane; and Wakefield . . .  
 Bolton, John, 39, Argyle Street, New Road; Blackburn; and Manchester Street . . .  
 Brown, Robert Harrison, Wakefield . . .  
 Briggs, Frederick, 93, Kennington Street, Beresford Street . . .  
 Barnes, Edward Samuel, 2, Falcon Court, Fleet Street; and Wells . . .

##### Clerks' Names and Residences.

T. M. Vickery, Lincoln's Inn Fields . . .  
 George Rooper, Lincoln's Inn Fields . . .  
 F. Pain Axford, Cornhill . . .  
 George Andrews, Weymouth and Melcombe Regis . . .  
 John Lawford, Drapers' Hall . . .  
 George Essell, Rochester . . .  
 William Brodrick, Bow Church Yard . . .  
 B. Lewis, Gray's Inn Square . . .  
 John P. Aston, Manchester . . .  
 Henry Vallance, Essex Street . . .  
 A. Paget, Leicester . . .  
 John Bramwell, Durham . . .  
 S. B. Jackaman, Ipswich . . .  
 James Waldron, Hartswell . . .  
 C. Parsons, Temple Chambers, Fleet Street . . .  
 Messrs. Goode and Bolton, Dudley . . .  
 Benjamin Dixon, Wakefield . . .  
 John Hargreaves, Blackburn . . .  
 F. J. Ridsdale, Gray's Inn . . .  
 John Lofthouse, Leeds . . .  
 Henry Brown, Wakefield . . .  
 W. F. Low, Wimpole Street . . .  
 M. Shearman, 18, John Street, Adelphi . . .  
 Robert Davies, Wells . . .

- Biggs, John Hall Newton, 8, Claremont Place,  
Pentonville; Derby; Colebrooke Row;  
Islington
- Broughton, Robert, 21, York Place, City Road
- Baker, Samuel Edward, 27, Southampton  
Row, Russell Square; and Aldwick  
Court, Blagdon
- Brodhurst, Alfred, 45, Stanhope Street, Park  
Place, Camden Town; Newark-upon-  
Trent
- Bleaymire, Edward, 10, Granville Square,  
Pentonville; and Penrith
- Beattie, James, 51, Hans Place, Sloane St.
- \*Bell, James, Uttoxeter; and 35, Arlington  
Street, Camden Town
- Champion, Charles, 21, Frederick's Place, Mile  
End
- Congreve, John, 14, Calthorpe Street, Gray's  
Inn Road; and Newark-upon-Trent
- Clarke, William, 26, Wilmington Square;  
Barnstaple; Craven Street, Burton Cres-  
cent; Salisbury Street, Strand; and  
King's Square
- Collins, William, jun., 2, Islington Place, Park  
Road, Islington; Winchester; Thavies  
Inn
- Calthrop, Thomas Downie, Morden College,  
Blackheath; and Doddington Grove, Ken-  
nington
- Clough, Benjamin Morley, 71, Harrison St.,  
Regent Square; and Bawtry
- Collins, Charles Atkins, 23, Southampton  
Row, Russell Square; Bath; Lloyd Sq.;  
and Great Ormond Street
- Cotterill, James Hardman, 32, Throgmorton  
Street
- Cater, James, jun., Walsall; Soham; and  
Bedford Row, Barnsbury Street
- Carr, William James, Ripponden
- Cattell, Christopher William, 1, Brunswick  
Row, Queen Square
- Cox, Frederick John, 14, Sise Lane
- Croft, John, 111, Strand; Castleton; and  
Judd Street
- Cockcroft, Lonsdale Maving, Newcastle-upon-  
Tyne
- Chew, Townley, Manchester
- Chapman, William Emerson, jun., 8, Arthur  
Street, Gray's Inn Road; and Holbeach
- Cheeseman, John Goodger, Steyning
- Dalby, Jesse, Wakefield
- Dixon, George, 14, Hawley Road, Kentish  
Town
- Duncalfe, John Thomas, 36, Sloane Street,  
Chelsea; and Walsall
- Dewes, William Pettit, 3, Raymond Buildings;  
Ashby-de-la-Zouch; and Northampton  
Place, Canonbury Square
- Dickson, William, jun., 12, Soley Terrace,  
Pentonville; and Alnwick
- Duncan, Andrew, jun., 11, Featherstone  
Buildings
- John Huish, Derby
- William Hallows, Bedford Row
- Francis Broughton, Falcon Square
- John Crick, Maldon
- John Baker, Aldwick Court, Blagdon
- Charles Pearson, New Sleaford
- William Bleaymire, Penrith
- H. G. Robinson, Half Moon Street
- James Blair, Uttoxeter
- Charles M. Stretton, 18, Southampton  
Buildings
- D. Jennings, Whitechapel Road
- Godfrey Tallents, Newark-upon-Trent
- Charles Carter, Barnstaple
- John H. Todd, Winchester
- J. S. Rymer, Whitehall Place
- F. H. Cartwright, Bawtry
- Robert Cook, Bath
- W. Henry Cotterill, Throgmorton Street
- T. Hustwick, Soham
- John Ridehalgh, Ripponden
- J. O. Hall, Brunswick Row
- George Cox, Sise Lane
- William Fooks, Sherborne
- William Chartres, Newcastle-upon-Tyne
- John Jacques, Ely Place
- Christopher Chew, Manchester
- Thomas Sturton, Holbeach
- G. Dempster, Brighton
- C. Chalk, Brighton
- Joseph Wainwright, Wakefield
- Thomas Henry Dixon, New Boswell Court
- William Thomas, jun., Walsall
- William Dewes, Ashby-de-la-Zouch
- William Dickson, sen., Alnwick
- A. Duncan, Featherstone Buildings
- W. Unwin, Sheffield

- Duffy, Richard Arthur, Nottingham . . . . . John Fox, Nottingham  
D'Aeth, George William Henry, jun., 2, Mitre Court; and 50, Southampton Row . . . . . Samuel Waller, Cuckfield  
Day, Henry, Hemel Hempstead . . . . . Henry Hughes, Clement's Inn  
Eagleton, John William, Arthur Street, Gray's Inn Road; Newark-upon-Trent; and Belton . . . . . Frederick Day, Hemel Hempstead  
Eltoft, Joseph, Manchester . . . . . T. F. A. Burnaby, Newark-upon-Trent  
Ford, Brutton John, 52, Great Marlborough Street, Exeter; and South Street, Berkeley Square . . . . . William Christopher Chew, Manchester  
Forbes, John, 26, Queen's Row, Bayswater; and Sunninghill . . . . . Henry M. Ford, Exeter  
Fellowes, John Butler, 14, Victoria Road, Pimlico; Plymouth; and Lombard Street . . . . . John Mitchell, Wymondham  
Fuller, Frederick, 23, Southampton Row; Lloyd Square; and Great Ormond Street . . . . . E. J. Jenings, Mitre Court Buildings  
Fullager, Walter Horne, Lewes . . . . . N. Lockyer, Plymouth  
Fisher, Edward Freeland, 9, Sussex Gardens, Hyde Park . . . . . John Physick, Bath  
Faithfull, Frederick Dundas, 60, Lincoln's Inn Fields; and Wath-upon-Deane . . . . . John E. Fullager, Lewes  
Gibbon, Henry, 32, Great James Street, Bedford Row . . . . . R. Almack, Melford  
Game, William, Pointington; 9, King's Bench Walk, Temple; and Liverpool . . . . . C. Fletcher Skirrow, Bedford Row  
Gramshawe, Robert, 8, Northampton Place; Canonbury Square; and Leicester . . . . . G. P. Nicholson, Wath-upon-Deane  
Godwin, Alfred, 21, Frederick Street, Gray's Inn Road; Essex Court, Temple . . . . . D. S. Bockett, Lincoln's Inn Fields  
Gray, Henry Andrews, 17, Brompton Crescent . . . . . William Henry Gibbon, Great James Street  
Gale, Charles Francis, 10 and 13, Queen's Square . . . . . H. H. Statham, and F. Horner, Liverpool  
Grevile, Giles, Bristol . . . . . William Freer, Leicester  
Gowan, William, Dulwich . . . . . C. Bailey, Winchester  
Husband, Sidney Otway, 4, Mitre Court Chambers; Wem; and Lower Calthorpe Street . . . . . Robert Gray, New Inn  
Hare, Richard, 41, Manchester Street, King's Cross; Wyke Regis; Trelleck Terrace, Pimlico . . . . . J. Bowen May, Queen Square  
Hale, James, 19, Charlotte Street, Islington; Charlotte Terrace; Richmond Road . . . . . C. Grevile, Bristol  
Harvey, Joseph, 67, Upper Charlotte Street, Fitzroy Square; and Leicester . . . . . A. T. Upton, Great Winchester Street  
Hollingshead, Henry Brock, Billinge Scarr, near Blackburn . . . . . T. Dickin Browne, Wem  
Hodgson, Richard Huddleston, Bradford . . . . . John Henning, Weymouth and Melcombe Regis  
Henderson, James, 8, Queen's Row, Pentonville; Blackburn; and Enfield . . . . . Edward Bousfield, Chatham Place  
Hearn, Thomas Bayley, Ryde, Isle of Wight . . . . . A. Paget, Leicester  
Holt, Joseph Peirson, 5, Soley Terrace, Pentonville; and Northallerton . . . . . O. Milne, jun., Manchester  
Hallward, Charles Berners, 151, Albany St., Regent's Park; and Sweptstone Rectory, Leicestershire . . . . . James Ainsworth, Blackburn  
Hamer, Thomas Greensit, 2, New Millman Street; Wakefield; and Upper Calthorpe Street . . . . . William Wells, Bradford  
Holt, Jonathan, 25, Bennett Street, Stamford Street; Malmesbury; Coventry; Newgate Street; and High Holborn . . . . . John Wilkinson, Clitheroe  
Haigh, John, Huddersfield . . . . . James Baldwin, Colne  
Harvey, Thomas Morton, Egham; and 36, Carey Street . . . . . D. Robinson, Blackburn & Clitheroe Castle  
Hamilton, Thomas William, 86, Great Tower Street . . . . . W. Hearn, Carisbrooke, Isle of Wight  
. . . . . J. H. Hearn, Newport, and Ryde  
. . . . . Thomas Fowle, Northallerton  
. . . . . J. T. Ambrose, Mistley  
. . . . . E. T. Cardale, Bedford Row  
. . . . . T. Haxby, Wakefield  
. . . . . J. Scholey, Wakefield  
. . . . . A. Tucker, Charles Street, Blackfriars' Road  
. . . . . C. J. Shirreff, Lincoln's Inn Fields  
. . . . . William Haigh, Huddersfield  
. . . . . Thomas Harvey, Egham  
. . . . . Keith Barnes, Spring Gardens

Holland, William, 3, Upper Baker St., Pentonville	A. W. Tooke, Bedford Row
Haldane, Robert, 29, Old Bond Street; and Old Burlington Street	T. G. Norcutt, Queen Square
Jule, George Montagu, 88, Piccadilly	F. Smedley, Jermyn Street
Janeway, William, Portland Place, North Clapham Road	John James Joseph Sudlow, Chancery Lane
Knapp, Richard, 4, Old Square, Lincoln's Inn; 11, Lower Charles Street, Northampton Square; 36, Southampton Buildings; 11 and 51, Devonshire St., Queen's Square	Benjamin Holloway, New Woodstock F. P. Chappell, Quality Court
Latch, George, 32, Golden Square; Newport, Monmouthshire	Stephen Towgood, Newport, Monmouth
Lanfair, William Burbidge, 5, Lamb's Conduit Street; and Aldersgate Street	H. R. Hill, Throgmorton Street
Lambert, Alfred, 13, Upper Stamford Street	John Iliffe, Bedford Row
Lewis, L. Winterbotham, Cheltenham	L. Winterbotham, Tewkesbury J. Thomas, Tewkesbury J. B. Winterbotham, Cheltenham
Leith, Frederick, King's Square, Goswell Road; Jewin Street	John Mowriyan, Sandwich J. Raw, 5, Furnival's Inn
Milward, George, 13, Half Moon Street, Piccadilly	Geo. Fred. Prince Sutton, Basinghall Street

[This List will be continued in our next.]

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### Courts of Equity.

#### LAW OF ATTORNEYS AND COSTS.

##### BILL OF DISCOVERY.

*Orders of 1845.*—The 125th Order of May, 1845, is not applicable to the case of a plaintiff at law, being also a defendant in equity, who files a bill for discovery in aid of his action, although the subject-matter is the same in the action and suit. Therefore, a defendant, when he has put in his answer to such a bill, may obtain an order of course for the payment of costs, and a writ of attachment may be issued on nonpayment. *Dingwall v. Hemming*, 33 L. O. 428.

##### BREACH OF TRUST.

1. *Solicitor's liability.*—A solicitor having advised his client (a person in an humble station of life) to commit a breach of trust by selling out stock, of which the client was a trustee, and having himself profited by the breach of trust, was ordered to be struck off the Roll, unless he showed good cause to the contrary; but having, in obedience to the decree in the cause, replaced the stock, and paid the costs of the suit, the court (taking into consideration his youth and other circumstances) abstained from further proceedings in the motion, upon his undertaking to pay to the said parties to the suit, their costs, charges, and expenses. *Goodwin v. Gosnell*, 2 Coll. 462.

##### See *Striking off the Roll*.

2. When several defendants are involved in a breach of trust, the court, in decreeing relief in respect of it, decrees the costs of the suit against them all, on the principle of giving the plaintiff the greater security for the payment, and without regard to the relative degrees of culpability

in the defendants. *Lawrence v. Boule*, 2 Phill. 140.

##### DELIVERY OF BILL.

The motion to commit for non-delivery of a bill of costs must be preceded by an order for its delivery within four days. *Re Wheldon*, 32 L. O. 371.

##### DELIVERY OF PAPERS.

See *Signed Bill*.

##### EXECUTORS.

See *Taxation*.

##### FUND IN COURT.

See *Lien*.

##### LEGATEE.

*Costs.—Solicitor and Client.*—Costs as between solicitor and client will be allowed to the plaintiff in a legatee's suit, where there is a deficient fund. *Burkitt v. Ransom*, 2 Coll. 536.

##### LIEN.

*Fund in Court.*—Lien of a solicitor upon a fund in court for his costs of suit, protected by a stop order.

No effective proceedings could be taken in a suit, in consequence of the contempt of two defendants: *Held*, that the plaintiff's solicitor was entitled to a taxation of his costs, and to a stop order on the funds. *Hobson v. Shearwood*, 8 Beav. 486.

##### MALPRACTICE.

*Disallowance of costs.*—A solicitor employed in the sale of an estate, knew that the title-deeds were in the possession of an adverse party; he however proceeded to prepare and obtained the execution of the conveyance and memorial. The sale went off, in consequence of the absence of the title-deeds. He was disallowed the costs of the proceeding, and the deed being a cloud on the title, he was also

ordered to deliver it without being paid the costs thereof. *Potts v. Dutton*, 8 Beav. 493.

#### PARLIAMENTARY COSTS.

See *Taxation*, 8.

#### RESPONSIBILITY OF SOLICITOR.

A solicitor took an insufficient security for his client, and the nature of the transaction was such, as in the opinion of the court to create a case of combined agency and trust. He was held (under the circumstances) personally responsible for the deficiency, and for the costs of the suit. *Craig v. Watson*, 8 Beav. 427.

#### SECURITY FOR COSTS.

1. *Misdescription.—Transfer of Title.*—The plaintiff brought her bill for redemption, describing herself as *A. B.*, the widow of the mortgagor, and claiming as his devisee and executrix; but she obtained probate of the will as *A. C.*, otherwise *B.*, spinster: *Held*, that as the description of the plaintiff in the suit involved the question of her title under the will, the above variance did not entitle the plaintiff to have the bill taken off the file, or security given for costs. *Griffith v. Ricketts*, 5 Hare, 195.

Case cited in the judgment: *Morgans v. Bridges*, 1 B. & A. 647.

2. *Removal of next friend.*—In a suit in which one of the plaintiffs, all of whom were out of the jurisdiction, appeared by her next friend, an order to substitute a new next friend for the then existing one, alleged to be a person of insufficient substance, and a menial servant of the solicitor who conducted the suit, and was also a defendant, or to give security for costs, was varied by allowing such next friend to continue, security for costs being given by consent.

*Quere*, whether a defendant can demand security for costs in a case where all the plaintiffs are beyond the jurisdiction of the court, but one of whom, not being an infant, appears by a next friend within the jurisdiction. *Landor v. Parr*, 34 L. O. 33.

#### SIGNED BILL.

1. *Construction of 6 & 7 Vict. c. 73.—Jurisdiction.*—*Order to deliver up papers.*—An order of course may be obtained for taxing a solicitor's bill of costs, under 6 & 7 Vict. c. 73, s. 37, if the same have been actually delivered, although it may not have been signed or enclosed in a letter signed by the solicitor.

The above statute does not affect the original jurisdiction of the court to order delivery of papers, &c., by a solicitor on payment of his taxed costs.

An order for a solicitor to deliver up all papers, &c., belonging to his client is restricted to such papers as relate to the business in respect of which the lien arose; and it will not be set aside as irregular, because it may literally include other papers, &c., belonging to the same client, upon which there may exist a lien for other business. *Re Pender*, 33 L. O. 43.

2. The provisions of the 37th clause of the 6 & 7 Vict. c. 73, for the authentication by signature of a solicitor's bill of costs, are intended for the protection of the client only, and therefore where a bill has been delivered without such authentication, that circumstance is no objection to an application by the client for its taxation.

The decision in *Ex parte Gaitskell*, in which it was held that applications for the taxation of bills, in the second class of cases provided for by the 37th section of the statute, do not require notice, confirmed. *Pender, in re*, 2 Phill. 69.

#### STRIKING OFF THE ROLL.

*Breach of trust.—Fraud.*—On a bill filed by parties interested under a will, against the sole acting trustee and executor, and against his solicitor, under whose advice the trust property had been improperly sold out by the trustee, and applied principally to the solicitor's use, praying that the stock might be replaced, the court, at the hearing, after directing certain inquiries, ordered that the solicitor should show cause why, having regard to his answer and the evidence in the cause, his name should not be struck off the roll of solicitors of the Court of Chancery. *Goodwin v. Gosnell*, 2 Coll. 457.

Case cited in the judgment: *Dungez v. Angove*, R. L. 1793, A. f. 548.

#### TAXATION.

1. *"Special circumstance."*—Where a *cestui que trust* seeks to tax the solicitor's bill paid by his trustee, on the ground of overcharge, he must allege and prove specific items.

It is a "special circumstance," within the meaning of the 6 & 7 Vict. c. 73, where a solicitor produces his bill at the time appointed for the settlement of a transaction, and refuses to complete, except on payment thereof. *Bennett, in re*, 8 Beav. 467.

2. *"Special circumstance."*—A mortgagee's solicitor would not part with the deeds until payment of his bill of costs, which had been delivered to the mortgagor's solicitor a month previously. *Held*, that this was not a sufficient case of pressure to induce the court to order a taxation.

A mortgagor has not a right to have the bills of the mortgagee's solicitor taxed upon different principles from those which would be applied to the taxation of the same bill upon the petition of the mortgagee.

Payment of a solicitor's bill, delivered at the last moment of settling a mortgage, being insisted on, without any opportunity of examination being afforded, &c., a "special circumstance," within the meaning of the Solicitors' Act. *Jones, in re*, 8 Beav. 479.

3. *"Special circumstance."*—Where payment of a bill of costs has been obtained by undue pressure, a taxation may be directed on proof of overcharge, without showing that such overcharges are so gross as to amount to fraud.

It is a "special circumstance" within the 6 & 7 Vict. c. 73, where, on paying off a mort-



page, a solicitor produces his bill and insists on payment as a condition for immediate completion, though items are objected to, and a taxation will be directed after payment, if there are apparent overcharges.

A taxation, at the instance of a mortgagor, of the bill of the mortgagee's solicitor, must be as between the solicitor and his client, the mortgagee.

Upon an application to tax a paid bill, the solicitor will not be permitted to add to any under-charges contained therein, but the taxation must be had on the bill as delivered and paid. *Wells, in re*, 8 Beav. 416.

4. *When refused*.—The lapse of 12 calendar months after payment of a bill of costs precludes taxation under the Solicitors' Act.

The rule applies where payment is made by trustees, &c., and the application for taxation is made, under the 38th section of the 6 & 7 Vict. c. 73, by a party "liable to pay." *Massey, in re*, 8 Beav. 458.

5. *When refused*.—*Jurisdiction*.—Parties agreed to compromise a suit, and the trustee's costs were to be deducted out of a fund in his hands. By an order of the Vice-Chancellor of England the compromise was confirmed. It appeared to be the agreement between the parties, that the costs should be taxed in the case. An application to the Master of the Rolls for taxation under the statute was refused with costs.

Jurisdiction of the Vice-Chancellor, under the 6 & 7 Vict. c. 73, to order the taxation of bills of costs. *Howard, in re*, 8 Beav. 424.

6. Where, upon an application for taxation under the Solicitors' Act, it appears probable, that upon grounds not determinable under that jurisdiction, payment ought not to be made without further investigation, this court may properly abstain from ordering payment, or from ordering the delivery up of deeds, till the question which cannot be determined under that jurisdiction, have been properly investigated and determined elsewhere. *Dalby, in re*, 8 Beav. 469.

7. *Executors*.—A solicitor was employed by a testator in his life time, and by his executors and trustees after his death. The latter applied for the taxation of the bills subsequent to the death: *Held*, that the solicitor was, on this application, entitled to have a taxation of all the bills. *Dalby, in re*, 8 Beav. 469.

8. *Parliamentary business*.—If a bill of costs contains charges relating to parliamentary business, and also charges relating to general business, the Court of Chancery has jurisdiction, under the act 6 & 7 Vict. c. 73, to make an order for its taxation; and it is unnecessary to obtain the Speaker's warrant, under the 6 G. 4, c. 123, for taxing those costs which relate to the parliamentary matters. *In re George Smith*, 33 L. O. 187.

9. *Irregular order*.—*A. B.*, who claimed some property, conveyed it to trustees, upon trusts for carrying on the litigation and payment of the costs, &c. The trustees employed a solicitor, and they raised a sum of money

upon *A. B.*'s note drawn for that purpose, which they placed in the solicitor's hands. *A. B.* alone obtained an *ex parte* order for taxation; it was discharged for irregularity. *Mobbs, ex parte*, 8 Beav. 499.

10. *Order of course* discharged, on the ground of the case being mis-stated upon the petition for the order. A solicitor having delivered his bill, is bound by it, and the taxation must be on the bill; he is not entitled, as of course, to reduce his demand, or to reserve the power of adding to the charges. *Carven, in re*, 8 Beav. 436.

#### TRUSTEE.

1. *Solicitor*.—A trustee acting as solicitor in the trust matters, is merely entitled to costs out of pocket. The rule is not inflexible, and compensation may, in special cases, be made him, under the authority of the court, by a fixed allowance, but not by allowing him to make the usual professional charges. *Bainbrigge v. Blair*, 8 Beav. 588.

Cases cited in the judgment: *New v. Jones*, 9 Jarman Blyth, 338; *Moore v. Frowd*, 3 Myl. & Cr. 45; *Marshall v. Holloway*, 2 Swan. 453.

2. *Local act*.—32nd Order of August, 1841. —Parish officers having received information that a person was a pauper lunatic, likely to do mischief, caused an order to be left with *A. B.*, who lived at his house, and appeared to have the care of him, for his removal to the workhouse. *A. B.* soon afterwards, assisted by other persons, took him forcibly to the workhouse in a strait waistcoat. He remained in the workhouse about a week, at the expiration of which he was brought before a magistrate and discharged. He then brought an action for an assault and false imprisonment, and an action of trespass, against the parish officers, and in one of them recovered 400*l.* damages, which, upon a motion for a new trial, were reduced, by consent, to 200*l.*, no new trial being granted. The other action was not tried. The trustees of the parish having, under a local act, authority to manage the parish accounts and to superintend the treatment of the poor, charged the damages and costs incurred in these actions against the poor-rates of the parish. The rates so charged were subsequently allowed in open vestry, and the charges paid out of them. Upon an information filed against the trustees, for the purpose of compelling them personally to refund the money so paid, as for a breach of trust, the court dismissed the information, being satisfied upon the evidence before it, without regard to the proceedings at law, that the parish officers had not participated in the forcible removal of the pauper, and had in other respects acted reasonably, though, perhaps, not strictly according to law, in the discharge of their duty; consequently, that they were entitled to be allowed the payment so made, either under the 26th section of the local act, which provided that all costs and expenses to be incurred by the trustees, or any persons employed by them, in prosecuting or defending any action touching

the execution of the act, should be defrayed out of the money arising by virtue of the act, or the general law applicable to overseers and their accounts.

The 32nd Order of August, 1841, applies to the case of an information filed against individual members of a body of public trustees, charging such individuals with a breach of trust. *Attorney-General v. Pearson*, 2 Coll. 581.

Case cited in the judgment: *Attorney-General v. Compton*, 1 Y. & C., C. C. 417.

**3. Apportionment between real and personal estate.**—The trusts of a mixed residuary gift of real and personal estate having failed, the costs of a suit by the next of kin, claiming the whole on the ground that the real estate was converted out and out, were appropriated between the real and personal estates, although the title of the heir to the land was held to be so clear that the court adjudged it to him in the absence of some of the next of kin. *Christian v. Foster*, 2 Phill. 161.

Cases cited in the judgment: *Howse v. Chapman*, 4 Ves. 542; *Ackroyd v. Smithson*, 1 Bro. C. C. 503; *Attorney-General v. Lord Winchelsea*, 3 Bro. C. C. 373; *Attorney-General v. Hurst*, 2 Cox, 364.

See *Breach of Trust*.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Lord Chancellor.

*Re Nias*. May 8th, 1847.

#### PRIVILEGE OF SOLICITOR FROM ARREST.

*An obvious deviation from the direct route, unexplained at the time of being taken into custody, will deprive a solicitor of his privilege of freedom from arrest whilst returning home from the court in which he has been engaged in the suit of his client.*

Mr. Romilly stated that this was an application by the solicitor for the plaintiff in the cause of *Jones v. Rose*, to be discharged from custody under the following circumstances:—Upon returning to his office in Copthall Court, in the city, from the Lord Chancellor's Court at Westminster, on the previous Saturday, where he had attended professionally in the suit, he had taken the steam-boat to London Bridge, and was proceeding to the Ship Tavern, in Water Lane, for the purpose of obtaining his dinner, when he was arrested between the western door of the Custom-House and the Coal Exchange, under a writ of attachment issued by the Master of the Rolls on the 21st of Dec. last. The divergence from the direct route from London Bridge to Copthall Court was a little above 300 yards, and he was taken into custody at a quarter before 3 o'clock, having left Westminster a few minutes after 2 o'clock. The affidavit did not state that he

informed the officer at the time of his arrest that he was proceeding to procure refreshment, and Mr. Romilly contended that he had not unnecessarily deviated beyond such limits as the court would allow. He cited *Hatch v. Blissett*, Gilb. 308; *Lightfoot v. Cameron*, 2 Wm. Blackstone, 1113; *Pitt v. Coomes*, 5 Barn. & Adol. 1078, and the cases there quoted by *Littledale, J.*; *Ex parte Clark, Re Sewerkropp*, 2 Dea. & Chitty, 99; *Ex parte Watkins*, in the *Attorney-General v. Skinners' Company*, 1 Cooper, 1, (also in 8 Sim. 377); and *Re J. T.*, in *Attorney-General v. Leathersellers' Company*, 7 Beav. 157.

Mr. Roll opposed the application, and relied upon the case before the Vice-Chancellor of England, (*Ex parte Watkins, supra*), and upon the circumstance of the intention to dine not having been communicated at the time to the officer.

The Lord Chancellor, after hearing Mr. Romilly in reply, said he did not think he could extend the protection to the present case. In requiring the party to return straight home the court did not mean to say that he was to proceed in the most direct line possible; but here there was a deviation of nearly 400 yards out of his route. The affidavit did not state that he told the officer he was going to dine at the place near which he was arrested, and therefore it was not proved to his lordship's satisfaction. The application must be refused, with costs.

*James v. Buckle*. March 26th, 1847.

#### DISCHARGING ORDER OF COURSE.

*An order of course can only be discharged upon the ground of irregularity in obtaining it.*

Mr. Lee and Mr. Selwyn said, that in this cause *James and Buckle* had been appointed joint receivers. *Buckle* had also an interest in the suit, and was desirous of getting in the accounts. Being prepared with his own, but unable to procure those from *James*, he took out a warrant for the latter to carry in his accounts, and procured an order from the Master that they should be brought in within a specified time. After the expiration of the time allowed, the Master certified that *James* had made default in bringing in his accounts, and *Buckle*, on the 18th of Feb. last, obtained the usual four day order that *James* should bring them in within four days after personal service of it. This order was subsequently discharged by Vice-Chancellor *Knight Bruce*, upon motion by Counsel for *James*, and, as was represented, on the grounds that the court would not encourage Receivers in a cause to go out of the course of their ordinary business and take an active part in the proceedings. The present motion was to discharge his Honour's order.

Mr. K. Parker and Mr. Hardy, who appeared for *James*, having acquiesced in the above statement,

The Lord Chancellor remarked, that he could not conceive upon what grounds they had ap-

plied to the Vice-Chancellor to discharge the order of course. They might possibly have contested the Master's order to bring in the accounts; but that not having been done, and the certificate of the Master having been regularly obtained, the four day order followed of course. An order of course can only be discharged on the ground of irregularity in obtaining it, for, as the term implies, a party who has a right to apply for it is entitled to have it granted. This motion must therefore be allowed.

### Rolls Court.

*Rodich v. Gandell.* May 22, 1847.

#### PRODUCTION OF PAPERS. — SOLICITORS' LIEN.

*It is no answer to a motion for the production of documents, to show that the party is a bankrupt, and that the documents are in the possession of his solicitor, who claims a lien upon them for costs.*

This was a motion for the production of documents.

Mr. Turner and Mr. Roundell Palmer, for the motion, stated, that it was opposed upon the ground that the solicitor of the party against whom the motion was made, had a lien upon the papers for his costs, and that therefore the party was unable to produce them. They cited *Furlong v. Howard*, 2 Sch. & Lef. 115; *Taylor v. Rundall*, Cr. & Phill. 104; and *Brassington v. Brassington*, 1 Sim. & Stu. 101, to show that the court would not allow the solicitor's right to obstruct the course of justice, but it would give time, if necessary, to enable a party to produce the documents required.

Mr. Glasse, in opposition to the motion, referred to a dictum of Lord Eldon in *ex parte Shaw*, Jac. 270, to show that a party could not compel his solicitor to give up documents on which he had a lien, without paying his bill. But in this case the party had become bankrupt since the debt to the solicitor was incurred; and how could he be compelled to discharge the solicitor's lien.

Lord Langdale expressed his opinion, that the party was bound to produce the documents. If a difficulty arose in the way of their production, the court would give him time to take such steps as were necessary for that purpose. He would make the order subject to such application as the party might make in case he was unable to obtain possession of the documents.

### Vice-Chancellor of England.

*Johnson v. Tucker.* June 12th, 1847.

#### NOTICE OF FILING REPLICATION. — 23RD ORDER OF OCTOBER, 1842.

*Where notice of the filing of a replication is not served, pursuant to the 23rd Order of October, 1842, the replication ordered to be taken off the file.*

In this case a replication had been filed on

the 11th of March last, but notice of such filing had not been served until the 15th April. The 23rd Order of October, 1842, directs that notice of replication shall be given the same day on which it is filed.

Mr. Bethell and Mr. Rogers now moved that the replication be taken off the file for irregularity, or that the service of the notice of replication be set aside for irregularity. They contended that the words of the order were clear and precise, and that, as all subsequent steps in the cause dated from the day on which the replication was filed, it would be unjust, by keeping the defendant in ignorance of the filing of the replication, to deprive him of the time he was entitled to, and compel him to go to the Master to enlarge publication. That in the case of *Lord Suffield v. Bond*, Leg. Obs., Dec. 19, 1846, the Master of the Rolls had granted an application of a similar description, and had ordered a certificate of the insufficiency of an answer to be taken off the file for irregularity. They also cited *Johnson v. Barnes*, 11 Jur. 261.

Mr. J. Parker and Mr. Glasse, contra, urged that the application was premature, and that at present there was nothing irregular in any of the proceedings. In the case of *Lord Suffield v. Bond*, subsequent steps had been taken in the cause after the certificate had been filed; it therefore differed from the present case, where nothing had been done by the plaintiff subsequent to filing the replication, and the defendant had not been hindered in any way.

The Vice-Chancellor said, he did not recollect that this question had ever arisen before; it appeared to him a very reasonable application. It was not denied that the defendant, through the conduct of the plaintiff in not giving him notice pursuant to the 23rd Order of October, 1842, might be obliged by the course of the court to take a proceeding which would not otherwise have been forced upon him. He did not think that the plaintiff had a right to put the defendant in such a position, and he should therefore direct the replication to be taken off the file, and that the plaintiff should pay the costs.

### Queen's Bench.

(Before the Four Judges.)

*The Queen v. Gifford.* Easter Term, 1847.

#### MANDAMUS.—PRACTICE.

*A parish clerk was dismissed from his office on a charge of misconduct by the incumbent in Nov. 1841, who died in the year 1844. The clerk made written applications to the incumbent in the years 1843 and 1845, but could obtain no answer. A rule nisi for a mandamus to the incumbent to restore him to the office was obtained in January last, and it was stated on the affidavits that the poverty of the applicant was the reason why an earlier application had not been made.*

*Held, that, under the facts of this case, the application for a mandamus was not made to the court in proper time.*

A RULE nisi had been obtained calling upon Mr. Gifford, the incumbent of Shalford, to show cause why he should not restore G. Sturt to the office of parish clerk.

Sir F. Theiger (with whom was Mr. Beetham) showed cause, and contended that the application was too late. Sturt had been removed from the office of parish clerk on a charge of embezzlement, in November, 1841, by Mr. Onslow, who was then incumbent of the parish, and who died in 1844. Since that time there have been three incumbents, and no application is made for a mandamus till January, 1847. (He was stopped.)

Mr. Self in support of the rule. It appears from the affidavits that Sturt by being deprived of the office of parish clerk was reduced to great poverty. That in the year 1843, and on two occasions in 1845, applications in writing had been made by him and his friends to Mr. Onslow and the incumbent who succeeded him, but they could not obtain any answer to their applications, and until there had been a refusal the applicant was not in a situation to come to this court for a mandamus. [Mr. Justice Wightman. The rule is, that the application must be made promptly, otherwise the court will not listen to it.] The delay has arisen from the poverty of Sturt, and the application has been made as early as possible under the circumstances of the case.

Mr. Justice Patteson.<sup>a</sup> There is no precise rule of court as to the time within which an application of this kind may be made, but the facts and circumstances of each case must guide the court in the exercise of its discretion. I do not think we ought to grant a rule for a mandamus under these circumstances. I do not say that poverty would not be a sufficient excuse under any state of facts, but in this case I can imagine it might have been most material that the application should have been made during the life of Mr. Onslow.

Justices Wightman and Erle, concurred.

Rule refused.

*The Queen v. The Overseers of the Oldham Union.* Trinity Term, 1847.

ORDER OF POOR LAW COMMISSIONERS.—MANDAMUS.—CERTIORARI.

*The Poor Law Commissioners made an order directing the overseers of the townships of a union to assemble and appoint a barrister to act as returning officer at a certain election of guardians. A rule for a mandamus to the overseer having been obtained,*

*Held, that there was nothing on the face of the order to show that the Poor Law Commissioners had exceeded the jurisdiction given them by the 4 & 5 W. 4, c. 76:*

*Held, also, that if the Poor Law Commissioners had power to make the order, the validity of it could not be discussed in show-*

*ing cause against a rule for a mandamus, unless the order had been first brought into this court by certiorari.*

A RULE nisi had been obtained, calling upon the overseers of the townships in the Oldham union to show cause why a writ of mandamus should not issue commanding them to assemble and appoint a barrister to act as returning officer at a certain election of guardians for that union in pursuance of the directions of an order of the Poor Law Commissioners.

Mr. J. Cobbett showed cause, and contended that the order of the Poor Law Commissioners, which was now sought to be enforced, was invalid. [Lord Denman, C. J. Can you raise an objection to the validity of the order without having first brought up the order by writ of certiorari?] The 4 & 5 W. 4, c. 76, s. 105, does not say that orders of the Poor Law Commissioners can only be questioned when brought up by certiorari.

Mr. Tomlinson contrà. These orders, by the 42nd section, have the same effect as if they were embodied in the act, and then the 105th section provides the remedy by certiorari. There is therefore no other mode of impeaching the validity of this order.

Lord Denman, C. J. I entertain a clear opinion that the Poor Law Commissioners have full power to make any order with respect to the regulation of the relief of the poor, and that an order made by them relating to such matters shall become equal to a legislative enactment, and shall be so considered until it shall have been brought up by certiorari and quashed. If, however, it can be shown that the order was not made in a matter relating to the administration of the Poor Laws, and consequently that the Poor Law Commissioners had no jurisdiction on the subject, then the order must fall of itself.

Mr. J. Cobbett then contended, that a returning officer for several parishes or townships was not an officer named in the 4 & 5 W. 4, c. 76. The effect of a contrary decision would be to make overseers union officers, and to cause them to depart from those duties which the law calls upon them to discharge.

Lord Denman. It appears to me that the appointment of a returning officer is one of those things which must be done for the general execution of the powers given by the act.

Patteson, J. I think the 40th and 46th sections, taken together, clearly show that the Poor Law Commissioners have power to require a returning officer to be appointed for carrying into effect the general purposes of the act.

Coleridge, J., concurred.

Erle, J. I am of opinion that the commissioners have power to make an order like the present, and if it is within their jurisdiction, then the validity of it cannot be disputed, unless first brought up by certiorari.

Rule absolute.

<sup>a</sup> Lord Denman, C. J., had left the court.

I therefore think, that the *Somerset Herald* is in the continuous service of the Crown, and it is inconsistent with the privileges of the Crown that he should be arrested. It is not necessary for me to say what is the proper course in a case like this. In 2 *Keeble*, 3, it is said that the Lord Chamberlain "must either remove such or make them pay their debts, the privilege being the king's, not the parties." But with that I have nothing to do.

Rule absolute.

*Vogel and another, executors of Ann Vogel, v. Thompson.* Trinity Term, 1 June, 1847.

**EXECUTORS.—SCIRE FACIAS.—JUDGMENT.**

*Where executors move for judgment on the sheriff's return of "nil" to a writ of scire facias, the affidavit in support of the application must state that probate has been taken out.*

In this case the plaintiffs, as executors of Ann Vogel, issued a writ of *scire facias* to revive a judgment recovered by their testator. The sheriff having returned "*nil*,"

*Miller* moved for judgment upon an affidavit stating, that on the 3rd January the judgment was recovered by the testatrix, and that the plaintiffs were executors; but the affidavit did not state that probate had been taken out.

*Pollock, C. B.* The affidavit is insufficient. Before we grant this application we ought to be satisfied that the plaintiffs have obtained probate of the will.

*Alderson, B.* The affidavit might have been sufficient if this were a proceeding in which the plaintiffs could get probate at any time during the course of it; but here the plaintiffs ask for judgment; they ought therefore to show that they have obtained probate. The affidavit must be amended.

**DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.**

*From May 25th to June 18th, 1847, both inclusive, with dates when gazetted.*

*Ffooks, William, Henry Charles Goodden, and Thomas Ffooks, Sherborne, Attorneys and Solicitors, so far as regards the said Henry Charles Goodden.* June 1.

*Gibson, John Robinson, and John Alexander Spalding, 9, Copthall Court, Attorneys, Solicitors, and Conveyancers.* June 11.

*Neild, Henry Isaac, and Frederick George Unwin, 40, Ely Place, Attorneys-at-Law.* June 1.

*Pool, Joseph Edmund, and Frederick Horatio Boulton, 1, Walbrook Buildings, City, Attorneys and Solicitors.* June 15.

*Slade, John, and William Denson Jones, Devises, Attorneys, Solicitors, and Conveyancers.* June 11.

*Wartnaby, Henry, Richard Austwick Westbrook, and George Gisby, Ware, Attorneys-at-Law, so far as concerns the said Henry Wartnaby.* May 28.

*Willasford, Charles, and John Tucker, Tavistock, Attorneys and Solicitors.* June 11.

**MASTERS EXTRAORDINARY IN CHANCERY.**

*From May 25th to June 18th, 1847, both inclusive, with dates when gazetted.*

*Ashton, William Henry, Stockport.* June 4.  
*Browne, Eyles Irwin Caulfield, Kidderminster.* June 8.

*Charsley, Frederick, Amersham.* June 15.

*Clarke, Edwin, Longton.* June 18.

*Fenwick, John Clerevaux, Newcastle-upon-Tyne.* June 8.

*Plummer, Stephen, jun., Canterbury.* May 25.

*Reynolds, Henry, Handsworth.* June 18.

*Selby, Francis Thomas, Spalding.* May 25.

**PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.**

**House of Lords.**

**NEW BILLS IN PROGRESS.**

London City Small Debts. Passed.

Juvenile Offenders. For 3rd reading.

Highway Rates. For 2nd reading.

Clergy Offences. In Committee.

**House of Commons.**

**NEW BILLS IN PROGRESS.**

Encumbered Estates (Ireland). Re-committed.

Registration of Voters. Re-committed.

Parliamentary Electors. For 2nd reading.

Vexatious Actions. In Committee.

Insolvent Debtors. For 2nd reading.

Joint Stock Companies. In Committee.

House of Commons Taxation of Costs. For further consideration of report.

Poor Laws Administration. For 3rd reading.

Abolition of Mastership in Chancery. For 2nd reading.

Abolition of Public Office in Chancery. For 3rd reading.

**THE EDITOR'S LETTER BOX.**

A CORRESPONDENT inquires whether a person can be restrained from making a patent article merely for his own use? In the letters patent all persons are prohibited from "either directly or indirectly making, using, or putting in practice the invention." In Mr. Hindmarch's elaborate work on the Law of Patents it is said that "the subject of the grant thus made by the patent is a sole and exclusive privilege which extends to the using and exercising of the invention or art invented by the patentee; to the making of articles by means of the invention or the exercise of it; and to the vending of such articles to the public."—Page 53. "If any person, except the patentee, make articles according to the patentee's invention, he commits an infringement of the patent.

A trustee under a will of personal property, is directed to lay it out on government, or real, or good personal security. He has lent the trust-money to B., (who has become a bankrupt,) on his bond or note of hand. Can the *cestui que trust* call upon the trustee to make good the trust-fund out of his own pocket?

"An Articled Clerk's" letter shall be attended to.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JULY 10, 1847.

—“ Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

### BUSINESS OF THE COMMON LAW COURTS.

#### CONTEMPORANEOUS SITTINGS IN BANCO AND NISI PRIUS.—SEPARATE BARS.

A CIRCUMSTANCE occurred at the banco sitting of the Court of Exchequer, one day during the past week, which has had the effect of directing public attention to the present state of the business in the courts of common law. In all three of the courts there is a considerable arrear, and with the praiseworthy design of reducing the number of causes remaining for hearing at the termination of Trinity Term, the judges of the Courts of Queen's Bench and Exchequer, under the authority of the statute 1 & 2 Vict. c. 32, appointed certain days for sitting in banco at Westminster, contemporaneously with which these courts were sitting at *nisi prius*, at Guildhall, for the trial of issues, the venue in which was laid in London. This arrangement has proved most inconvenient to the profession, and, in many instances, disastrous to the suitor. Unless the leading counsel generally declined accepting briefs at the London sittings, the courts sitting in Banco could not be punctually attended, and points reserved at *nisi prius*, in order that an opportunity might be afforded for deliberate argument, must, in all probability, be disposed of in the absence of the counsel who had previously conducted the case, and upon whose exertions the client mainly relied for bringing the merits fairly and fully before the court.

The mischief and injustice occasioned by the existence of such a state of things

VOL. XXXIV. No. 1,009.

may be more readily understood than explained. The suitor is more damnified, and feels more dissatisfied, by a speedy decision given under such circumstances than by delay; and the administration of justice itself is prejudiced by having points of “great pith and moment” determined after a partial investigation and imperfect argument, or it may be, in the absence of counsel, and without any argument. These evils were so strongly felt by the leading members of the bar, that a public and formal representation was made to the Barons of the Court of Exchequer on the subject, who, it is only doing them justice to state, met the matter with the greatest candour and fairness. It was admitted, that the contemporaneous sittings of the same court at Westminster and Guildhall was most inconvenient and detrimental to the public interests, and that a general understanding prevailed in the profession, when the statute authorising sittings after Term in Banco was in progress through parliament, that those additional sittings were not to interfere with the *nisi prius* sittings in London after Term. As far as we can understand, it is not proposed that the Court of Exchequer should again appoint sittings in Banco, whilst the court is held at Guildhall for the trial of *nisi prius* causes. Of course, the inconvenience complained of, will continue to exist, unless the Courts of Queen's Bench and Common Pleas adopt the same rule as the Court of Exchequer, and refrain from appointing those simultaneous sittings. Should a uniform practice in this respect be adopted by all the courts, as it is clearly desirable there should be, the question remains, how

is the arrear of business at present existing to be got rid of, or prevented from increasing? The additional sittings in Banco were considered necessary, because the Terms were found insufficient for the disposal of the business brought before the courts during Term. Should the duration of the Terms be protracted, or should an additional court be established with concurrent jurisdiction, to lighten the pressure which begins to be so severely felt by the judges of the existing courts?

This is a matter requiring serious and anxious consideration from those on whom the responsibility devolves of providing for the due administration of justice. To lengthen the duration of the Terms, it would become indispensably necessary to alter the periods appointed for holding the circuits, and to adopt fresh arrangements in nearly every branch of the administration of justice in which the common law judges are engaged. Whether a change of arrangements could be devised which would not produce greater inconveniences than those it is proposed to remove, is, at the best, extremely doubtful. The expense of establishing and maintaining a new court of co-ordinate jurisdiction with the three courts of common law, is the objection, we doubt not, with which any such proposition would be met at the outset, although it is the objection, perhaps, of all others, entitled to the least weight. The inhabitants of a country so highly taxed as this is, have indeed reason to complain of the manner in which their affairs are managed, if sufficient cannot be spared to defray the comparatively trivial expenses incidental to the efficient administration of justice. Be that as it may, no practicable arrangement could be suggested to prevent the inconvenience and prejudice to suitors which must arise from having distinct and independent sittings of the same court in different and distant localities. We confidently hope, therefore, to see a plan open to so much and such well-founded objection abandoned at once and for ever, whatever may be substituted.

The difficulty of securing the attendance of leading counsel, even when all the courts are sitting in Westminster Hall, is notorious. The anxiety, disappointment, and not unfrequently, the positive injustice to which clients and their responsible advisers are subjected in consequence of the unexpected absence of a counsel at the moment when his services are needed, can only be understood by those practically ac-

quainted with the business of the courts. The obvious remedy for this evil is, that the leading counsel should *select particular courts* and practise *exclusively* in those courts. This course has been voluntarily adopted by many eminent advocates with equal advantage to themselves and satisfaction to their clients. The present Chief Justice of the Common Pleas, (Sir Thomas Wilde,) and Mr. Baron Platt, for many years confined their practice, the one to the court over which he now so worthily presides, and the other to the Court of Queen's Bench. The three courts, we believe, furnish instances in which gentlemen of acknowledged capacity and extensive practice have attached themselves to a particular court. The certainty of having a counsel always at his post when the cause in which he is retained is called on, is an advantage too obvious not to be readily appreciated. Those who have adopted a resolution so satisfactory to their clients, and so consonant with that which the public at large consider to be the correct course, will be sure to find their reward. We trust their example will be speedily followed by all who have arrived at the position to accept leading business at the bar. It is unnecessary, and would be injurious, to impose such a restriction upon juniors. As already hinted, however, if the principle of selecting a particular court was adopted by the bar to the fullest extent, it would be ineffectual if the same court held its sittings at different places contemporaneously. Such a system unreasonably requires the discharge of duties from their nature irreconcilable, and, desirous to see all the regulations of our courts approved of and respected, we trust it may not be persevered in.

## LAW OF LANDLORD AND TENANT.

### INSUFFICIENT NOTICE TO QUIT.

THE latest published number of reports of the Court of Queen's Bench\* contains two cases upon the sufficiency of notices to quit, to be added to the multitude of cases already determined and ranging under the same head. Upon a hasty review of this class of cases, it may be conceived the rule requiring half-a-year's notice to quit was so inconvenient that it ought never to have been established; but upon a closer examination of those cases, it will be found that

\* 7 Queen's B. Reports, part 3.



the difficulty and uncertainty have been produced mainly by a departure from the plain rule, and by the adoption of subtle distinctions suggested with the design of preventing the law from operating harshly in particular instances.

Amongst the cases to which this observation applies is, that of *Doe dem. Lord Huntingtower v. Culliford*,<sup>b</sup> which was pressed upon the court in a late case, and has now for the first time been expressly overruled. There, a notice, dated the 27th Sept., required a tenant who was let into possession on the 4th August, to quit "at Lady-day next, or at the end of your current year;" the current year expired on the 29th Sept.; and this was held to be a good notice for the current year ending at Lady-day, because a two days' notice could not be intended; and Bayley, J., said, apparently with the concurrence of the rest of the court, that the notice must be understood so as to be effective. *Doe dem. Lord Huntingtower v. Culliford* was cited in a subsequent case of *Doe dem. Williams v. Smith*.<sup>c</sup> In that case the tenancy expired in February, and the notice, dated 21st October, 1833, was as follows:—"at the expiration of half a year from the delivery of this notice, or at such other time or times as your *present* year's holding of or in the said premises, or any part thereof respectively, shall expire after the expiration of half a year from the delivery of this notice." Here the present year's holding expired in February, 1834, but as the notice necessarily referred to some time after the expiration of half a year from the notice, it was held that the word "present" might be rejected, and the notice applied to February, 1835. Both those cases were brought under the consideration of the Court of Queen's Bench in the late case of *Doe dem. the Mayor of Richmond v. Morphett*.<sup>d</sup> There the defendant held under the corporation of Richmond from Martinmas to Martinmas, and by a notice dated and served on the 21st Oct., 1842, he was called upon to quit "on the 13th day of May next, or upon such other day or time as the current year for which you now hold the same will expire." The objection to this notice was, that it was either a notice for Martinmas, 1842, in which case the time was insufficient, or for 13th May, 1843, in which case it did not expire

at the end of a year's tenancy. The court was clearly of opinion that the notice was insufficient: it could not be good for May, and the current year expired in November, a few days after the date of the notice. If there was an absolute inconsistency, the court might perhaps reject part, but a notice bad in its origin could not be made good by putting a strained interpretation on terms quite clear in themselves. The judges also expressly declared that *Doe dem. Lord Huntingtower v. Culliford* was not good law, and that the doctrine there laid down, that the language of a notice might be altered to give it effect, was not maintainable. "If we were to interpret notices upon the principle there acted upon," says Patteson, J., "where could we stop?" It would be to say at once that every notice shall be valid.

Three of the four judges who thus expressed themselves in *Doe dem. Mayor of Richmond v. Morphett*, determined, in the case of *Doe dem. Williams v. Smith*, that the word "present" may be rejected as surplusage, and a notice held valid which was admitted to be lame and inaccurate. The distinction between that case and the more recent case of *Doe dem. Mayor of Richmond v. Morphett* is, that in the last case the court was not only called upon to reject, but to add words, and to read the notice as if it ran,—"the current year *next ending half a year after* this notice."

In the second case now reported,<sup>e</sup> a yearly tenant gave his landlord notice on the 31st January, to quit on the 1st May following, and it was admitted that the notice was insufficient, but the question was, whether there was not a waiver of a half year's notice. It appeared that the landlord at first acquiesced, but ultimately refused to accept the notice. The tenant quitted according to his notice, and the landlord then entered and did some repairs. He afterwards brought his action for use and occupation, for the half year's rent due after the tenant quitted, and the Court of Queen's Bench held, upon the authority of *Johnstone v. Hudleston*,<sup>f</sup> that the tenancy was not determined by the acts of the landlord, and that he was entitled to recover against the tenant.<sup>g</sup>

<sup>e</sup> *Bassell v. Landsberg*, 7 Q. B. 638.

<sup>f</sup> 4 Barn. & Cress. 922.

<sup>g</sup> The question whether a surrender can be inferred from the mere conduct of parties, without any act done which would take effect as an estoppel, was discussed in a late case of *Lyon v. Reed*, in the Exchequer, reported 13 Mees. & W. 285.

<sup>b</sup> 4 Dowl. & Ry. 248.

<sup>c</sup> 5 Ad. & El. 350.

<sup>d</sup> 7 Queen's B. Rep. 577.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### ABOLITION OF A MASTERSHIP IN CHANCERY.

10 & 11 VICT. c. 60.

An Act to abolish One of the Offices of Master in Ordinary of the High Court of Chancery. [2nd July, 1847.]

1. *Recites 3 & 4 W. 4, c. 94, appointing masters and giving salaries, &c. to their clerks. 5 Vict. c. 5, abolishing master of Exchequer and appointing Mr. Richards. Resignation of Mr. Lynch. One mastership abolished.*—

Whereas by an act passed in the 3 & 4 W. 4, c. 94, it was enacted, that the appointment of all masters in ordinary of the High Court of Chancery should be vested in his Majesty, his heirs and successors, and that such master should thereafter be appointed by letters patent under the great seal of Great Britain; and it was by the said act also enacted, that the salaries to be paid to the chief and junior clerks of each of the said masters should be 1,000*l.* a year and 150*l.* a year respectively, and that it should be lawful for the said junior clerks to receive and take 1*½d.* per folio of 90 words for every copy of every document or writing made in the office of the said master: And whereas by an act passed in the 5 Vict. c. 5, Richard Richards, Esquire, then one of the masters of the Court of Exchequer, was appointed as an additional master in ordinary of the High Court of Chancery, and it was thereby enacted, that upon the death, resignation, or removal from office of the said Richard Richards it should be lawful for her said Majesty from time to time by letters patent under the great seal to appoint a fit and proper person to supply such vacancy: And whereas Andrew Henry Lynch, Esquire, late one of the said masters in ordinary, did on the 25th day of March now last past duly resign his said office, and the same thereby became and now is vacant: And whereas it is expedient that the number of the said masters in ordinary of the High Court of Chancery should be reduced to the same number as existed before the passing of the said last-mentioned act: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual, and temporal, and Commons, in this present parliament assembled, and by the authority of the same,

That it shall be lawful for her Majesty not to fill up the office so vacant by the resignation of the said Andrew Henry Lynch, but that the same shall be and the same is hereby abolished.

2. *Chief and second clerks retained for period not exceeding twelve months.*—That for the convenience of prosecuting the causes and matters referred to the said Andrew Henry Lynch, and now transferred to the other masters in ordinary, it shall be lawful for the Lord Chancellor, if he shall think fit, to retain George Barrett and Edward Wright, the late chief and second clerks of the said Andrew Henry Lynch, as chief and second clerks respectively, with all

the duties, rights, privileges, and emoluments thereto belonging, as if a master in ordinary had been duly appointed to succeed the said Andrew Henry Lynch, but nevertheless for a time not exceeding twelve months from the passing of this act; Provided always, that in the event of the death, resignation, or removal of the said George Barrett and Edward Wright, or either of them, before the expiration of the said twelve months, it shall be lawful for the Lord Chancellor, if he shall think fit, to appoint a successor to them or either of them during the time aforesaid.

3. *Compensation to chief and second clerks.*—That it shall be lawful for the Lord Chancellor, with the consent of the commissioners of her Majesty's treasury, to award such compensation (if any), and in such manner and upon such conditions, as he may think fit, to the said George Barrett and Edward Wright, or either of them, in consideration of the loss they or he may have sustained by the abolition of the said office of master in ordinary.

## REPRESENTATION OF THE PROFESSION IN PARLIAMENT.

At the commencement of the present year we called the attention of our readers to the want of due professional representation in parliament. Looking at the events of the session, we cannot say that our "learned friends" on either side of the house have rendered much "suit and service," either to the law itself, or to any branch of the profession. The only exception we can find is in the labours of Mr. Watson's committee for inquiring into the enormous amount of fees of courts of law and equity. We anticipate that much good will ultimately result from the investigations which are in progress in that committee, relating to the taxes on justice. The report of the Legal Education Committee, founded on the evidence of the previous session, is also a valuable contribution to our defective stock of information on the state of the profession.

Whilst we think the members of these committees are entitled to all praise for their devotion of time and attention to the important subjects before them, we search in vain for any other evidence of professional zeal amongst the many eminent lawyers who adorn the roll of parliament.

It will not be a useless employment, if our readers, in contemplation of the close of the present and the election of a new parliament, will go over the names of the members of the bar who hold seats in the House of Commons, first examining those who are either well known in Westminster

Hall or in the ranks of law reform. Let them ponder upon the deeds done by these gentlemen towards the real improvement of the administration of justice, or the due maintenance of the station and character of professional men, and we shall be infinitely obliged by receiving a statement of their senatorial labours, whether successful or otherwise.

## NOTICES OF NEW BOOKS.

*The Lord Chancellors and Keepers of the Seal in the reign of King John.* Communicated to the Society of Antiquaries by EDWARD FOSS, Esq., F.S.A., and published in the *Archæologia*, vol. xxxii. London : J. B. Nichols & Son. 1847.

THIS is an exceedingly interesting dissertation on the Chancellors and Keepers of the Seal in the reign of King John. Notwithstanding our natural respect for most of the subjects which relate to ages long passed away, we must admit that many topics of antiquarian research are not deserving of the expenditure of learning and ingenuity which are sometimes bestowed upon them. Here, however, we heartily enter into the controversy, and rejoice that Mr. Foss has investigated, with his accustomed accuracy of research and force of reasoning, the several questions which arise on this important portion of our legal history. A discussion, indeed, which relates to the Charters of a reign memorable for the greatest of all our charters, cannot fail to interest every reader. It is very remarkable, as pointed out by Mr. Foss, that

"Scarcely two writers agree either in the names or the succession of the Lord Chancellors of the reign of King John. The earlier compilers of the list of those officers had to rely either on the historians, who were often mistaken, or on their own examination of original documents, which was necessarily limited and unsatisfactory. Since the publications issued by the Record Commission, and subsequently by royal authority, the means of arriving at correctness have been materially increased; and recent authors must be presumed to have used them. Much allowance is therefore to be made for the errors of the former, while the assertions of the latter become a fair subject of critical inquiry; the more especially in John's reign, most of the records of which have been published *in extenso*."

Mr. Foss then states the names of the principal writers who have treated of the Lord Chancellors of this period, and proceeds thus :—

"The only certain evidence of the names and succession of John's Chancellors is to be collected from the public records of his reign; and, inasmuch as there are among them few direct entries of the disposition of the Great Seal, similar to those which were introduced in subsequent reigns, such evidence can only be obtained by a careful examination and comparison of dates and facts in the various rolls which have come down to us. The Patent and Close Rolls contain important testimony, and incidental notices appear on the *Rotuli de Finibus* and other Rolls; but the principal dependence must be placed on the proofs which the *Rotulus Chartarum* affords.

"The general impression has been, that when a charter is authenticated by the words 'Data per manum A. B. or C. D.' the person so subscribing was either a Chancellor, or Keeper of the Great Seal, or Vice-Chancellor. This mode of authentication has occasioned the discrepancy in the various lists hitherto published; some authors designating as Chancellors persons whom others call Keepers or Vice-Chancellors."

The object of Mr. Foss's present disquisition is, to remove the confusion which has thus arisen, by fixing with greater certainty the names and order of the Chancellors, and by considering the real character borne by those who have been thus called Keepers or Vice-Chancellors.

"It is not to be presumed, however," (says our author,) "that all the charters of this reign are subscribed in the manner above mentioned. They are attested in all varieties of forms; sometimes solely by the King himself, and sometimes by him in the presence of a witness or witnesses; sometimes by one witness alone, and sometimes by several; and sometimes with and sometimes without the before-mentioned additional authentication, commencing with the words 'Data per manum.'

"Throughout the reign there are comparatively few charters which are so authenticated by the Chancellors themselves. That it was not their positive duty, even when present, to affix their names to this form, is proved by the fact, occurring in multitudinous instances, of a Chancellor being, *eo nomine*, one of the *witnesses*, when the formal authentication has been made by one of the so-called Keepers. In every case, however, where the name of a known Chancellor appears, his title is distinctly added, except in one instance, to be afterwards adverted to; while, on the contrary, with respect to those who have been denominated Keepers, in no one instance is there any addition to their names, beyond the clerical dignity they happened to hold at the time.

"The question then that first occurs is, What was the official character of those persons who thus authenticated the charters, to whose names the designation of Chancellor was not added; and whether, even if it be allowed that they were in some way connected

with the Great Seal, they have been properly designated as Keepers or Vice-Chancellors?

"In the previous reign of Richard I., when the King went to the Holy Land, he left one seal in England to be used by the Chancellor Longchamp, whom he had deputed, with others, to rule the kingdom in his absence; and he took another seal with him, under the care of an officer, who was called Vice-Chancellor. Roger Malus Catulus was one of those who held this office, and the seal was suspended round his neck when he was unfortunately drowned off the Isle of Cyprus. These officers authenticated the charters that were granted abroad, by adding their names to the words 'Data per manum;' but when they did so, they almost invariably appended the designation of 'Vice Cancellarius,' or 'tunc agens vices Cancellarii nostri.' The constant omission then of this title by the subscribers of the Charters of King John forms a strong presumption that they did not possess it.

"Again, the fact already mentioned, that the Chancellor, as Chancellor, is often named as a witness to charters, the formal authentication of which is signed by one of the so-called Keepers, proves that such formal subscriber was not a Keeper appointed, as in Richard's reign, to act merely in the absence of the Chancellor.

"In addition to this, there is the converse of the fact; many instances occurring in which one or other of these officers was a witness to charters authenticated by the Chancellor himself.

"Moreover, as will subsequently appear, there were, at the same period of time, two or three and sometimes four individuals performing the same duty of authenticating the charters in this manner.

"And, lastly, no document exists evidencing any appointment of Keeper or Vice-Chancellor, unless a single entry with regard to Ralph de Neville may be considered an exception.

"It is scarcely too much to say that any one of these facts would be sufficient to ground a presumption that these officers were neither Keepers of the Seal nor Vice-Chancellors.

"If then they were not Keepers nor Vice-Chancellors, what character did they really bear?

"There is ample evidence to shew that all of them held situations about the Court, with other official duties connected with the payment or receipt of the revenue or otherwise, and that some of them were in constant attendance on the king in his perpetual movements from place to place. They were also, without exception, ecclesiastics, rewarded with benefices, and gradually promoted to various clerical dignities,—canonries, archdeaconries, deaneries, and sometimes bishopricks.

"Now there were two classes of officers to whom this description would particularly apply, viz., the Clerks of the Treasury or Chamber of the Exchequer, and the Clerks of the Chancery.

"The rolls of subsequent reigns prove that

the Great Seal was frequently, if not usually, deposited in the Treasury of the Exchequer; of course under the care of its officers, who were answerable for its safe custody, and when it was required to be used would be in attendance for the purpose of producing it. The Clerks of the Chancery also were high officers, performing certain important functions, forming part of the state of the Chancellor; and when the office was vacant, the Great Seal was secured under the private seals of two or three of the principal among them. Some of them were no doubt in daily attendance on the Lord Chancellor, as is the case now with their representatives the present Masters in Chancery, relieving each other in turns, and at that time probably performing in succession the duty of affixing the formal authentication to the documents sealed in their presence.

"A curious confirmation of the presumption that they were no more than officers in attendance on the Lord Chancellor, occurs in two instances of charters in 2 John, authenticated in this form by the Chancellor, to which the only witnesses are Simon Archdeacon of Wells, John de Gray, Archdeacon of Gloucester, and John de Brancestre, Archdeacon of Worcester; all three of whom are represented as Keepers at this very time, and were then authenticating charters in the same manner.

"There is no single fact that tends to contravene the probability that these so-called Keepers or Vice-Chancellors were either officers of the Treasury of the Exchequer or Clerks of the Chancery; and, in pursuing the inquiry into the names of the Chancellors and their deputies, this presumption will appear more probable. Indeed, the dates of the attestation of the officers in question are in such regular succession, as almost to enable us to distinguish the order of their attendance."

All writers, as Mr. Foss observes, agree in making Hubert Walter, Archbishop of Canterbury, the first Chancellor of the reign, and that he was appointed at, or soon after, the coronation of the king, on the 27th May, 1199. The period of his retirement is variously stated by Philipot and Dugdale; but Mr. Foss considers it certain that Hubert continued Chancellor from his first appointment till his death, on the 13th July, 1205.

"During the earlier part of his tenure of the office, his name frequently appears to the charters after the words 'Data per manum;' but in the later years his authentication occurs but seldom and at long intervals. To the officers who so signed them when he did not, Mr. Hardy and Lord Campbell give the title of Keepers of the Seal, or Vice-Chancellors. They state them to be Simon Fitz-Robert, Archdeacon of Wells, and John de Gray, Archdeacon of Cleveland, jointly; John de Brancestre, Archdeacon of Worcester; Hugh

Wallys, Bishop of Lincoln, (meaning Hugh de Wells, so called from the place of his birth); and Josceline de Wells, whom Lord Campbell by mistake calls a layman, he in fact afterwards becoming Bishop of Bath and Wells:—a goodly assemblage of Keepers during one Chancellorship of only six years' duration!

"There is no doubt, however, that these five persons, whatever was the character of their office, performed the duty of authenticating the charters during Hubert's Chancellorship; and the following summary of their signatures will shew that there were no less than seven different modes in which these five deputies acted. From October, 1 John, to June, 2 John, the names of Simon, Archdeacon of Wells, and John de Gray, appear; in general jointly, but on some occasions within these months each of them signs alone. On the elevation of John de Gray to the Bishoprick of Norwich in 2 John, Simon de Wells continued to sign alone, till June, 6 John, when he was appointed Bishop of Chichester. During the same period, John de Brancestre and Hugh de Wells, for a short time together, and each of them separately, and also Josceline de Wells, subscribed the charters in the same manner. There is one instance also in which John de Brancestre signed alone on the same day on which he had affixed his signature in conjunction with Hugh de Wells.

"Thus, if these attestations are to be deemed proofs of their being Vice-Chancellors or Keepers, there would be at least three, if not four, enjoying that character at the same time."

After the death of Archbishop Hubert, when the "Chancery" came into the king's hands, Lord Campbell states, that "then the Great Seal remained some time in the custody of John de Brancestre," implying that he held it till the appointment of the new Chancellor, Walter de Gray; and Mr. Hardy's arrangement would lead to the same conclusion. "The Charter Roll, however," says Mr. Foss, "does not support this view."

'It is true that John de Brancestre's name is attached to the charter next following the entry as to the death of the Archbishop, dated July 24, 1205: but it is to that charter alone; and he not only never afterwards signs another charter in that character, but the next two charters, dated on the 26th July, are authenticated by another officer. There is nothing to shew that he held it beyond the day on which he signed that single charter; and if that attestation constitutes him a Keeper, the title would be more justly applicable to Hugh de Wells and Josceline de Wells, under whose hands all the other charters during the intervening months are given. The learned authors, however, have passed them over at this period, although they mentioned them as Keepers when performing the same duty under Hubert.

"The fact is, that the Great Seal remained

in the King's hands during the whole of the period in question, and was no doubt given out to be used under his orders, as occasion required, by the customary officer of the court. A positive proof of this is recorded on the Patent Roll, where there is the entry of a quitance to Adam de Essex, a chaplain to the King, and a clerk in one of the Chancery offices,<sup>b</sup> on his accounting for 87l. 3s. 8d., the proceeds of the Chancery, while it was in the King's hands after the Archbishop's death, viz., from Thursday next after the Feast of St. Mildred (July 13) to Saturday next after the Feast of St. Michael (September 29) 7 John;<sup>c</sup> a period occupying the whole of the interval up to the appointment of Walter de Gray."

Another error relates to the chancellorship of Richard de Marisco, the claim in whose behalf (until a much later period) is, we think, conclusively disposed of by our acute and diligent antiquary who states that—

"Walter de Gray being about to proceed to Flanders on a temporary mission, he sent the Seal to the King by Richard de Marisco, who appears, by many entries on the Patent Roll,<sup>d</sup> to have been a clerk of the Chamber of the Exchequer, which was the place where the Seal was usually deposited; and he no doubt was the officer responsible for its safe custody, and was naturally employed to deliver it to the King. A royal mandat., dated the 10th of October, the very day after, is directed to the Sheriff of Kent, commanding him to provide a vessel for the voyage.<sup>e</sup> Not only in that document, but in many subsequent records, to as late a date as July 7, 16 John, 1214, Walter de Gray is invariably mentioned with the title of Chancellor."<sup>f</sup>

Mr. Foss next notices another claimant who is put forward,—Ralph de Neville, afterwards Dean of Lichfield and Bishop of Chichester, to whom the seal was delivered on the 22nd Dec., 1213. But this claim is deemed equally untenable until a later period. It is remarked also by Mr. Foss, as an extraordinary circumstance, that though others have been introduced as

<sup>b</sup> I conceive that Adam de Essex was perhaps the Clericus or Magister Scriptorii, or more probably the Scriptor Rotuli Cancellariæ, and kept the duplicate of the Great Roll, called the Chancellor's Roll, of which a specimen, that of 3 John, has been published by the Commissioners of Public Records. Under an entry in the Patent Roll of 6 John, p. 52, the following memorandum appears: 'Non est in Rotulo A. de Essex quia oblit' est.'

<sup>c</sup> Rot. Pat. 8 John, vol. i. p. 70.

<sup>d</sup> Rot. Pat. vol. i. pp. 74, 81, 82, 83, 86, 91.

<sup>e</sup> Rot. Claus. 15 John, vol. i. p. 156.

<sup>f</sup> Ibid. pp. 161, 162, 168. Rot. Pat. vol. i. p. 105, 109, 109, 111.

Chancellors, or Keepers, solely on the ground of the mode in which the charters were authenticated, the name of Peter de Rupibus has been hitherto omitted in every list, either as a Chancellor or a Keeper; and yet there is no doubt, on the unquestionable evidence now adduced, that he was Chancellor during Walter de Gray's absence.

"The order in which the Chancellors succeeded each other, are shewn in a tabular view, and a second table is added, exhibiting the names and succession of those officers of the Treasury of the Exchequer, or clerks of the Chancery, who authenticated the charters when the Chancellors did not; together with a statement of the time during which each of them acted. A comparison of these dates will make it manifest that these persons were merely official instruments, exercising a formal duty at stated intervals during the same period of time, and that they were not, as they have been called, either Keepers of the Great Seal or Vice-Chancellors."

We are glad thus to see that Mr. Foss, who is honourably known to our readers as the author of "*The Grandeur of the Law*," still continues, in his retirement from the profession, to pursue his learned researches into the history and antiquities of the law. We understand that, ere long, two volumes will appear of his large biographical work of our illustrious judges.

## EXECUTION OF THE CRIMINAL LAW.

### TRANSPORTATION AND JUVENILE OFFENDERS.

THE Report of the Select Committee of the House of Lords on the execution of the Criminal Law, has just been published. It states, that many witnesses have been examined and answers received to the questions submitted to the Judges of the United Kingdom, and the committee report as follows:—

"In the *first* place, nearly all are agreed that the punishment of transportation cannot safely be abandoned; that it has terrors for offenders generally which none other short of death possesses; that no such fear attends imprisonment, especially for hardened offenders; that no hope exists of imprisonment being so far rendered more formidable as to supply in all respects the place of transportation. There prevails some slight difference of opinion, but more in appearance than reality, as to what classes of criminals dread it the most; for

when one or two of the witnesses state that prisoners in a superior station, as merchants or bankers' clerks, or persons in the law, convicted of forgery, would prefer being sent abroad because they are observed, when under sentence of imprisonment, to have a peculiar fear of being seen and recognized, the same witnesses allow that these individuals, if imprisoned in places where they are unknown, would deem the punishment much less heavy than transportation. The evidence all plainly points to the conclusion that this punishment has peculiar terrors for such persons, and there is only one opinion given by all the witnesses, or rather one fact stated by them, as to receivers of stolen goods, by whom transportation is dreaded in an extreme degree.

"It ought, however, to be observed, that the degree of weight which may be given to the evidence generally, or to the testimony of particular witnesses, in any discussion upon the administration of criminal justice, must depend in great measure upon the answer to another question, viz., what particular mode of executing the sentence, either of transportation or of imprisonment, is in the contemplation of the witness or of the persons whose opinions he professes to give.

"There can be little doubt that a sentence which imports an entire separation for life, or for a very long period, from his criminal associates and from his family, must have a greater degree of terror for an offender than any imprisonment at home which holds out the hope within a shorter period of rejoining his family, and renewing all his criminal associations. But, before forming any sound opinion upon the relative merits of these different modes of secondary punishment, it would be necessary to clearly understand and fully to consider all the details through which either one or the other is to be carried into execution.

"Upon the subject of transportation nearly all the learned judges are clearly and strongly of the same opinion; they consider that it would be extremely unwise to abandon it.

"*Secondly*.—That imprisonment as usually practised is not an efficacious punishment, though accompanied with hard labour, and with separation or with silence, as it is in some prisons, is likewise the result of the evidence. Only those who undergo it for the first time appear to feel it much; this suffering soon wears off. A second commitment finds the criminal by no means unprepared to undergo it, and it ever after ceases to exercise a deterring effect. The number of times that young offenders have been committed, some of them twelve or fifteen times within a few years, seems strongly illustrative of this position; whereas convicts returned from transportation, either by escape or by expiration of their sentences, regard with the utmost terror the repetition of that punishment.

"How far imprisonment can be so far altered as to be efficacious, either as preparatory to transportation or as a punishment by itself, is a question of difficulty, upon which little evi-

dence could be given, inasmuch as no sufficient experience has yet been had of the improved systems which are now in partial operation.

*“Thirdly.*—The evidence all tends to show the great importance of improving our prison discipline. Solitary confinement ought on no account to be inflicted beyond a very short time, as three or four weeks with a considerable interval after each week, and only two or at most three weeks during a period of eighteen months or two years. Its effects on both the bodily and mental health are such as plainly to prescribe these limits.

“The evidence also establishes an important distinction between solitary confinement and the discipline of the separate system. For the cure of moral evil, time is so essential a condition that any system incapable of being long continued must fail of attaining its object. For this reason solitary confinement, which cannot be prolonged without injury to the prisoner, must fail. The silent system, as it has been termed, i. e., criminals working together in silence, is objectionable as leading to a multiplicity of gaol offences, and inefficient as wanting that power of forcing men to commune with themselves, which criminals especially dread and require. The separate system, where it has been fairly tried, seems to supply exactly what is needed, forcing the mind to self-communion, and allowing this to be broken only by communication with those morally the superiors of the convict. Nor does this system, on the balance of the evidence, appear to the committee to be inconsistent with the health of the prisoners in body or mind, although on this last point there is a difference of opinion, some witnesses regarding this discipline as hurtful, not indeed to the structure and functions of the understanding, but to the energies of the will. On this subject the committee would recommend, first, that great care be taken in administering the system of separate confinement with labour, and, secondly, that the number of prisons adapted to the practice of it be multiplied.

*“Fourthly.*—The evidence throws some light upon the treatment of young offenders. That the contamination of a gaol as gaols are usually managed may often prove fatal, and must always be hurtful to boys committed for a first offence, and that thus for a very trifling act they may become trained to the worst of crimes, is clear enough. But the evidence gives a frightful picture of the effects which are thus produced. In Liverpool, of fourteen cases selected at random by the magistrates, there were several of the boys under twelve who in the space of three or four years had been above fifteen times committed, and the average of the whole fourteen was no less than nine times. The opinions of competent judges, especially on the bench, vary as to the expediency of giving to magistrates a power of summary conviction in such cases; but the inclination of opinion is in favour of confining this to professional persons exercising judicial or police functions; or if two ordinary justices

should be entrusted with it, to interposing the check of a jury, composed, however, not of twelve but of three or four persons. It is also the very general opinion that magistrates may safely and advantageously be armed with a power of discharging for slight offences, upon taking the recognizances of parents or masters for the good behaviour of the party. Important evidence will be found in the appendix, especially from Birmingham and Manchester, in favour of a judiciously exercised discretion in discharging boys, especially when apprehended for the first time. The principal difficulty of giving a summary jurisdiction arises from the difficulty of fixing a limit in point of age, and of ascertaining in each case that the party comes within the line. But the committee are strongly inclined to think that much of this might be got over, even without appointing special justices, by enabling magistrates in petty sessions to exercise the summary power, with the previous consent of the parties themselves to submit to such tribunal, confining the jurisdiction to certain offences, and the punishment of six months imprisonment, with or without labour, or to the infliction of whipping in the presence of certain appointed officers, with or without such imprisonment.

“The question of punishment of juvenile offenders is a further and distinct one beside that of the jurisdiction and power of conviction in their case. Very important evidence has been given in favour of dealing with such offenders, at least on first convictions, by means of reformatory asylums on the principle of Parkhurst prison, rather than by ordinary imprisonment; the punishment in such asylums being hardly more than what is implied in confinement and restraint, and reformation and industrial training being the main features of the process. Without going beyond the principle which should be followed on this question, the committee are disposed to recommend the adoption, by way of trial, of the reformatory asylums as above described, combined with a moderate use of corporal punishment. The committee also recommend the trial of a suggestion made by witnesses who have given much attention to this subject, that, wherever it is possible, part of the cost attending the conviction and punishment of juvenile offenders should be legally chargeable upon their parents.

*“Fifthly.*—The working of convicts exposed to public view is condemned by most of those who have been consulted or examined as a practice tending to harden the offender, as revolting to the feelings of the community, and even as calculated to excite a feeling in the convict's favour. The French authorities have with great courtesy and candour communicated to the committee valuable information upon this subject; and this information, corroborated by a witness examined upon the state of the Bagnes or places of forced labour in France, leads to a very unfavourable opinion respecting this punishment as there conducted.

“It is moreover clear upon the evidence that



this kind of working would tend to undo the effects of any reformatory system which might be adopted prior to such working.

"The objections, however, to this practice are materially diminished if the convicts be employed in remote and comparatively unpeopled 'districts,' such as may be found in some of the colonial possessions of the crown, or in other situations, where the labour of convicts may be employed without all the evils attendant upon working under the public gaze.

*Sixthly.*—"Witnesses of the most competent authority from Ireland are of opinion that the system of employing large bodies of convicts together in the public view could not be adopted with safety in that country, where the sympathy of the mass of the people would be in favour of the criminal, especially in all cases of agrarian crimes, and that it would be consequently necessary to transfer to England all Irish criminals destined to be employed on public works, in case this mode of punishment were adopted.

*Seventhly.*—There is almost entire unanimity in opinion against imprisonment for short terms. There is no prospect of the reformation of any class by such punishments while their tendency is certain to accustom young offenders to the infliction, and thereby to lessen its deterring effects. If, however, it is found in the administration of the criminal law that short imprisonments must still be inflicted, the committee see no reason why solitary confinement should not form part of such sentences, subject to the formerly stated limitation in respect of time.

*Eighthly.*—The evidence, both from France and elsewhere, of the evil effects produced by the liberation of many convicts yearly as their terms of imprisonment expire, would seem strongly to inculcate the necessity of obviating the great inconvenience of setting at liberty in this country on the expiration of their sentences those who had once been convicted of serious crimes.

"It appears that Christiana, the capital of Norway, is so injuriously affected by the proportion which the liberated convicts bear to the population—nearly one in thirty—that the inhabitants have been called upon by the police to provide the means of their own security from such persons. In France, where between 7,000 and 8,000 convicts are liberated yearly, the superintendence of the police (*surveillance*), and the compulsory and fixed residence of the convict, are found very insufficient, especially since the invention of railways. The residence of the liberated convicts is found to be a permanent danger to society. The system of imprisonment (*Reclusion*), or of the *Bagnes* or *Travaux forcés*, is of little effect in reforming, or even in deterring from a repetition of the offences punished, and the proportion of those recommitted for new offences is not less than thirty per cent. Thus of about 90,000 persons tried in the whole kingdom, above 15,000, or one sixth of the whole number, had already suffered imprisonment, to say nothing of the

corrupting effects produced on the community even by those who escape a second punishment.

"Looking to these facts, the committee are of opinion that the punishment of transportation should be retained for serious offences; that such punishment should in some cases be carried into effect immediately, in others at a later period; that the first stages of the punishment, whether carried into effect in this country or in the colonies, should be of a reformatory as well as of a penal character, and that the later stages at all events should be carried into effect in the colonies, the convict being for that purpose retained under that qualified restraint to which under the existing system of transportation men holding tickets of leave or conditional pardon are subjected.

"The particular spots to which convicts may be thus sent, and the degree of superintendence to which it is expedient that they should for a limited time be subjected, are matters requiring the most attentive consideration of the government, with whom much discretion respecting them must of necessity be left; they will have to make their decision upon these points from time to time according to the varying circumstances of different localities, such as the state of the labour market and the moral condition as well as the feelings and wishes of the free colonists.

"The papers lately presented to parliament and referred to the committee lead to the inference that in many parts of our colonial possessions there will be a readiness to receive and employ convicts after they have undergone a period of reformatory discipline either at home or in the colonies. The accounts received of the behaviour of the prisoners sent out from Pentonville and Parkhurst, and the opinions expressed in the colonies respecting them, are very encouraging on this point.

"The committee must not be supposed to have either overlooked or underrated the alarming state of crime and depravity which appears to have arisen in parts of the Australian colonies, but they think that these evils might be remedied by alterations in the police, the penal, the religious, and the moral system to which the convicts, after undergoing reformatory discipline either at home or in the colonies, are subjected, together with such measures as would remedy the existing disproportion of the sexes in the colonies.

*Ninthly.*—Respecting the expediency of abolishing capital punishments the committee found scarcely any difference of opinion. Almost all witnesses, and all authorities, agree in opinion that for offences of the gravest kind the punishment of death ought to be retained. But the committee find considerable difference of opinion upon the deterring effect of punishment generally. But it is remarkable that those who have actual intercourse with convicts are they who feel the least sanguine as to this deterring or exemplary effect of penal infliction, and who lean the most to make trial of punishment as affording the means of reforma-



tion. The experiment that has been tried at Stretton on Dunsmore in Warwickshire for above twenty-eight years, and similar experiments at Horn near Hamburg, and at Mettray in France, and eleven other establishments in imitation, during the last eight years, afford a highly gratifying view of the efficacy of reformatory discipline, especially upon young offenders.

“*Lastly.*—Upon one subject the whole of the evidence and all the opinions are quite unanimous—the good that may be hoped from education, meaning thereby a sound moral and religious training, commencing in infant schools, and followed up in schools for older pupils; to these, where it is practicable, *industrial training* should be added. There seems in the general opinion to be no other means that afford even a chance of lessening the number of offenders, and diminishing the atrocity of their crimes.

“The committee, therefore, deem that they should not be discharging their duty if they did not earnestly press these momentous subjects upon the attention of the legislature. Without raising any speculative question upon the right to punish those whom the state has left in ignorance, it may safely be affirmed that the duty of all rulers is both to prevent, as far as may be possible, the necessity of punishing, and when they do inflict punishment to attempt reformation. The committee, therefore, strongly recommend the adoption of effectual measures for diffusing generally, and by permanent provisions, the inestimable benefits of good training and of sound moral and religious instruction; while they also urge the duty of improving extensively the discipline of the gaols and other places of confinement.”

## ILLEGAL ASSOCIATIONS FOR THE RECOVERY OF SMALL DEBTS.

It is curious that the Small Debts Act, which was supposed to have reduced the costs of legal proceedings to the smallest possible amount, has so far already failed in its effect, that associations are springing up in different parts of the country formed by tradesmen, subscribing a small annual sum to remunerate the solicitor of the society for his services in recovering debts in these courts.

One of these societies is called “The Tradesmen’s County Courts and Protective Association;” another “The Small Debts’ Court Society;” and a third “The Association for the Protection of Trade.” The members subscribe an annual sum, for which each is entitled to the advice and assistance of the solicitor in any matter or subject within the County Courts Act, the members respectively paying the solicitor the sums disbursed on their behalf:—and in some cases a per centage of the debts recovered, as a fund for punishing fraudulent debtors.

It is avowed in the prospectus of these societies, that they are formed for the purpose of enabling creditors to obtain legal assistance in recovering their debts in the county courts, at a small annual charge, and the duties of the solicitor are thus defined:—“To issue from the county clerk’s office summonses to the debtors to appear before the court;—to collect the necessary evidence in support of the creditor’s claims;—to attend the courts on their behalf; and to perform all the other matters appertaining to the recovery of the amounts due from the debtors, or to their commitment.

The Incorporated Law Society having received complaints against these establishments, submitted a case for the opinion of counsel, and are advised as follows:—

“The object of the societies appears to be, that the members of it shall, out of a common fund, assist each other in carrying on suits in the small debts courts although they have no common interest in the subject matter of the suits. This is clearly illegal. (Hawkins, P. C., book 1, ch. 83. Gwillim on Tithes, 4th vol., 1381. *Oliver v. Bakewell*).”

“There may be difficulty in saying whether such conduct can be proceeded against as a violation of any of the statutes passed in early days against maintenance, but it is unnecessary to consider that question, it being clear that maintenance is an offence at the common law, independent of the statutes. (Hawkins, s. 28, ch. 83. *Pechell v. Watson*, 8 Mees. and Welsby, 691).”

The council of the Incorporated Law Society have given notice to the solicitors of these associations in order that they may withdraw therefrom, or at least abstain from carrying out the illegal objects contemplated by them, otherwise it appears the Law Society will prosecute all the parties concerned.

Independently of the *illegality* of such proceeding, it is professionally *improper* in the solicitors concerned in them to seek employment from the clients of other solicitors upon pretence of conducting their business on cheaper terms than usual. It is open also to the suspicion, that whilst they are thus concerned in small debt cases, they will seek employment from the clients of their brethren in more important matters. “Let it be reformed altogether.”

## CONSTRUCTION OF COUNTY COURTS ACT.

THE 59th section requires that the plaintiff shall be entered, *stating the substance of the action*, and thereupon the *summons*, *stating the substance of the action*, shall be issued under the seal of the court; and the 2nd and 5th rules

of practice require, that the plaintiff shall, if the sum sought to be recovered exceeds 5*l.*, deliver certain copies of the statement of the particulars of the demand or cause of action, and that one copy thereof shall be annexed to the summons. In some cases in which I was recently engaged for the defence, I took objections to the summonses, on account of the defendant's being only required to appear and answer the plaintiff "in an action of contract, the particulars of which are hereunto annexed."

I contended that the substance of the action ought to be set out (as if it were declared on) in the summons; and that the particulars of the demand annexed did not cure the defect, nor were alone sufficient; for that above 5*l.* both were requisite; the statement of the substance of the action being required by the act, and the particulars by the rules of practice.

The learned judge of the Somerset court, however, decided that it was not necessary, in actions above 5*l.*, that the substance of the action should be stated in the summons; that it was sufficient if the particulars were annexed; that, in fact, both were not necessary; and that it was only necessary in actions under 5*l.* for the substance of the action to be stated in the summons. I doubt the prudence of too much laxity of practice, and this point appears to me to involve important considerations. I shall thank some of your readers for their opinion thereon.

A SUBSCRIBER FOR SEVERAL YEARS.

## SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

### THE FOURTH ANNUAL REPORT OF THE COUNCIL.

IN presenting its fourth annual report, the council have the high satisfaction of congratulating the society on its continued progress and prosperity. Its income exceeds its expenditure, and more members have been elected within the last twelve months than in either of the preceding years; nor is this advantage counterbalanced by the death of any distinguished colleague in the great work of law amendment.

When the society looks back at the difficulties attending its original formation, the reluctance of mankind—and especially of professional classes—to fall in with new views; the fears of the timid; the rashness of the sanguine; the apathy of the indolent; the apprehensions of pecuniary interests; the jealousies of official prejudice; and the host of objections which these and other motives raised against its institution, it will find ample reason to rejoice that so much of opposition has been allayed or neutralised; and that so many prophecies of danger have been unfulfilled. If the society had indeed been composed of rash innovators, dilettante legislators, and unpractical declaimers, its final failure would have been assured; it might have commenced in pomp, but it must have ended in insignificance. But *practice, practice*, has been its rule of action;

its inquiries have been directed to subjects of immediate importance, of which the remedies were not so remote as to give to the subject no other than a speculative interest; and while it adopts the often-repeated maxim of advocating the reform of all proved abuses, it takes pains to discover, and to prove them. It is for this latter object that it has so earnestly invited the assistance of non-professional members; of men, who, unimbued with technical prejudices, can see, and often most acutely feel, the evils of a system, though they may be unable to contrive the practical remedy: *cuique arte sua credendum* applies to the stretching of a shoe, more than to the discovery of where it pinches. Even on technical matters, and among practical men, there is a technical bigotry, which often prevents a man from being the best reformer of his own professional practice. Sir Samuel Romilly was great on the reform of criminal law, and the late Mr. Justice Williams, when a common law barrister, was the most formidable assailant of the abuses of the Court of Chancery. When, therefore, we are answered by a non-professional friend, whom we invite to become a member of the society, that he knows nothing on the subjects of its investigation, we say, in reply, "Come, that we may teach you;" and be assured, that in that process of teaching, we shall become self-instructed. This argument also applies, and with greater force, to those junior members of the profession, whom a laudable diffidence might otherwise deter from joining us. They may doubt their own usefulness, till reminded that the task of drawing up the reports of committees will generally devolve upon them, and that in the execution of that task, they will have at once an opportunity of improvement and distinction.

The caution with which our proceedings are conducted is another leading feature in the practice of the society; there is no acting upon impulses, there are no hurried reports, no hasty resolutions. Giving their committee every due credit for the great care and continuous diligence with which their inquiries are conducted, the general meetings of the society do not hesitate to send back for revision any subject which they do not believe to have been fully investigated, on which new objects of investigation appear to have arisen in the course of discussion, or of which the importance appears to demand a more extensive range of examination. This may give to our proceedings the appearance of slowness. It is at any rate an answer to the imputation of rashness. We do not ask to be judged by the number of our reports, but by their importance. Neither do we estimate the value of our institution by its direct results alone; its mere existence has its practical advantages; the mere question "why is there such a society?" must induce a beneficial investigation in the mind of the inquirer. Thus it is that from this, and other co-operating causes, the amendment of the law is now receiving much more of popular attention, and much sounder views are entertained respecting

it, than at any former period. The enormous increase of national wealth, and the corresponding complexities necessarily, not artificially, incident to the multiplication of property, multiplication not in the amount alone, but in the natures and descriptions of such property, will readily account for the public anxiety on this head. Men feel, in their daily dealings, that the institutions of the Plantagenets and the Tudors are as little applicable to the management of a joint-stock company, as their suits of armour would be to the purposes of locomotion. The courts themselves practically demonstrate their incapacity to deal with unanticipated relations; and the arrears in every one of the higher tribunals prove the necessity for new and increased jurisdictions.

Under these circumstances your council call upon you in the fullest confidence, to continue your exertions in extending the range of the society's operations, by recruiting its numbers, and adding to the publicity of its proceedings. You will point with laudable self-satisfaction to the instances in which your labours have already prepared the public, and even the legislative mind, for great and important changes—you will turn to statutes already passed at the suggestion of the society; and you may be permitted to speculate on the influence which its proceedings, or anticipated proceedings, may have had in hastening other measures, which might otherwise have been indefinitely delayed.

There is no branch in which these effects have been more conspicuous than in that of Real Property and Conveyancing. Of this the Act for extinguishing Satisfied Terms is a very remarkable example. Its utility has been recognized both in courts of law and equity, and its provisions have been found to be attended with those beneficial results in practice which you anticipated from them. We have high authority for stating that in one property alone several thousands were saved during the first year of its operation.

We noticed in our last report that a committee of the House of Lords, composed of members entertaining great diversity of opinions on most other points, had unanimously required "a thorough revision of the whole subject of conveyancing, and the disuse of the present prolix, expensive, and vexatious system." This has led to the appointment of a commission to inquire into the measures necessary for carrying the wishes of the lords into effect; and it is now shown by the most unequivocal signs, that not only the great landed proprietors, and the general body of the public, but a great majority of the profession of the law, are prepared for the extensive change which such a resolution demands. Concurrently with these demonstrations, during the present year, your committee on the Law of Property has continued its investigations on the subject, and has presented a report on the propriety of establishing a general map of the lands of England and Wales, and on the materials now in existence for making such a

map. It has made another report on the practicability of connecting the principles of insurance with titles to land. These reports have been very amply discussed, both within and without the precincts of the society. The council feels itself specially called upon to acknowledge the services of this committee, which is still continuing its labours on several important subjects referred to its consideration.

During a great portion of the last half century, the state of the Court of Chancery has occupied the attention of statesmen and lawyers; while its delays, expenses, and vexations, have most severely taxed the patience and purses of its suitors. Three new judges, and a numerous staff, have been added to its judicial strength; but the word "arrear" has not been banished from its vocabulary. Popular opinion has long pointed to the Masters' Office, and the system of references and reports, confirmations and revisions, as the main cause of these obstinate evils. Your council, therefore, thought it a fit subject to be referred to your Equity Committee, and that committee has made a report "on the improvements which may be made in the Masters' Offices." The report contains many valuable suggestions, and has given rise to a very full discussion of the whole procedure of Courts of Equity. But the subject is very far from being exhausted, and the council look forward to a series of reports, and hope for numerous papers, on this most important and most intricate branch of inquiry.

The committee on criminal law has presented a report on the various plans which have been tried or proposed for the improvement of the treatment of criminals, and on the principles on which punishment ought to be awarded. This subject was also very fully discussed; and the society had the advantage of a draft report, prepared by Mr. M. D. Hill, which, though it differed in some respects from the report which was adopted, contained very valuable suggestions. The council have had the gratification of knowing that in the subsequent discussions on secondary punishments which have taken place in both Houses of Parliament, during the present session, the views contained in the report of our Criminal Law Committee, which were distinctly brought under the notice of the House of Lords by the noble president of this society, were very generally recognized and adopted.

Another report from this committee, as to whether juvenile offenders might not be advantageously submitted to the jurisdiction of the petty sessions, has also been made the subject of legislation. The bill has passed the Commons, and will probably become law.

Viewing with great interest the subject of the administration of justice in our numerous colonies, and convinced that the hold which a full and implicit confidence in the law exercises on the affections of a people, long after military or any other force would fail, affords the best security for allegiance to the mother country; and peculiarly attracted to the ques-

tion by the state of those penal colonies, the difficulties of the due government of which were specially suggested by the preceding inquiries as to criminal punishments, your council commenced an intended series of references to the colonial committee, by an inquiry "as to the law and practice relating to colonial judges, in respect to their removal from office." The committee has presented a report which has been received with general satisfaction. It demonstrates that the present state of the administration of justice in our vast colonial empire is in many respects unsatisfactory, and requires careful, fearless, and unprejudiced inquiry. That judicial independence, in all jurisdictions, is the first guarantee of good government, is a proposition so universally admitted, that your council would not pause to comment on it, but for the opportunity of suggesting that slight inconveniences arising from want of subordination are of little moment, and of easy remedy, compared with the danger to be apprehended from any derogation from the judicial character. Your council trust that this committee will continue the deliberations which it has so well commenced.

Your council regret that the committee on the law of debtor and creditor has made no progress; and that the numerous bills on this intricate subject which have been brought into parliament during the present session are not destined to produce any immediate advantage to the trading and other classes interested in them.

The progress, however, of a measure of the last session in some degree diminishes that regret. The council has viewed with great pleasure the establishment of a system of local judicature throughout England and Wales; and, though it may be premature to speak at present of the ultimate operation of that measure, we may be permitted, from all indications, to anticipate great benefit to the community, without any real loss to the profession.

It is indeed with very considerable satisfaction that your council is able to trace a great abatement in that species of self-interested opposition, which in former times so injuriously impeded the amendment of the law. With a few exceptions, lawyers are now taking larger views of professional protection; they find that in most instances the public interest is their own; and in the few cases of exception, or supposed exception, they feel that a class-interest cannot be permitted to stand in the way of social progress. That laws are to be made for the benefit of the people, and not of the lawyers, is now an admitted truth: prolix pleadings and conveyances, useless and multifarious appeals, motions and petitions of course, unattended warrants, unissued writs, fictitious procedure, unearned fees and sinecure offices, have had their day; and though a few yet remain, your council fully anticipate, that at no distant day, they will be extinguished, (certainly that no new claims to compensation will be created,) and that they will yet see the time, when no judge, officer, advocate or attorney, will look to profit from any source, from which

the suitor or client does not derive an adequate and direct advantage.

The time has now arrived when your council is to surrender into your hands the trust you have reposed in them. Hitherto its members have been annually re-elected, without any change; but it is far from their wish that this should be considered a matter of course, nor would any individual deem himself aggrieved, if another, better qualified in the opinion of the society, should be substituted in his place. In some instances, the pressure of other avocations has prevented some of the members of the committee of management and chairmen of committees from giving to the society all the attention they would have desired.

With every wish for your progress and prosperity, and the fullest determination on the part of those, who may have the honour to be re-elected, to continue their exertions, the council takes its leave.

### TITHE COMMISSIONERS' REPORT.

THE Tithe Commissioners have made the following Report, addressed to Sir George Grey, the Home Secretary:—

"It is our duty to report to you the progress of the Commutation of Tithes in England and Wales, to the close of the year 1846.

"We have received notices that voluntary proceedings have commenced in 9,627 tithe districts; of these notices 4 were received during the year 1846.

"We have received 7,044 agreements, and confirmed 6,749: of these, 13 have been received, and 45 confirmed, during the year 1846.

"6,072 notices for making awards have been issued, of which 583 were issued during the year 1846.

"We have received 4,470 drafts of compulsory awards, and confirmed 3,878: of these, 534 have been received, and 502 have been confirmed, during the year 1846.

"We have received 9,565 apportionments, and confirmed 9,262; and of these, 570 have been received, and 602 confirmed, during the year 1846.

"In 10,627 tithe districts, as will be seen from the above statement, the rent-charges to be hereafter paid, have been finally established by confirmed agreements or confirmed awards.

"We have in our possession agreements and drafts of awards as yet unconfirmed, which will include 887 additional tithe districts; and make a total, when completed, of 11,514 districts in which the tithes will have been commuted.

"We have to repeat the assurance which we have happily been able to give in all our former reports, that the process of commutation are going on, on the whole, tranquilly and satisfactorily.

"We have adverted, in three former reports, to the state of the law under what is called Lord Tenterden's Act.

"We have to express our deep regret that that law remains as unsatisfactory as ever. While this uncertainty continues, it is impossible for us to adjudicate with any justice to the parties in very many cases which await our decision, and in which proceedings are necessarily suspended.

"After our preliminary adjudications, some litigation in the superior courts and some cases of contested and protracted appointments will assuredly follow. We have repeatedly explained and lamented the very serious delays which must thus result from the continued postponement of any rule, either legislative or judicial, which we can apply to these cases.

(Signed) "T. WENTWORTH BULLER,  
"RD. JONES."

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

In our last number we closed the Series of the Digest of Cases in the Courts of *Equity*; and it may here be convenient to refer to the several sections in the present volume of that part of the Digest. They are as follow:—

Law of Wills, p. 56.

Law of Property and Conveyancing, p. 74.

Construction of Statutes, p. 101.

Principles of Equity, p. 127.

Pleadings, p. 148.

Practice, p. 173.

Evidence, p. 199.

Law of Attorneys and Costs, 224.

Privy Council.

### APPEALS.

CHURCH RATE.

By the stat. 59 G. 3. c. 134, s. 14, it is enacted, that it shall be lawful for the church-wardens of any parish, with the consent of the vestry, to raise and borrow money upon the credit of the church-rates of any parish, for the purpose of defraying the expenses of any church or chapel. *Held*, by the Judicial Committee of the Privy Council, (reversing the judgment of the Arches Court of Canterbury,) not to authorise churchwardens to borrow money upon the credit of the church-rates, for repayment of a debt incurred in past years for repairs to the parish. *Piggott v. Bearblock*, 4 Moore, 399.

Case cited in the judgment: *Rex v. Churchwardens of Dursley*, 5 A. & E. 10.

### COLONIAL APPEAL.

*Practice*.—Appeal allowed, under the 7 & 8 Vict. c. 69, direct from the Court of Assize of the Island of Jamaica, to her Majesty in council, without bringing a writ of error in the Court of Errors (the intermediate court) in the island.

Such appeal is not of course, but requires special grounds to be shown, to warrant the application. *Barnett, in re*, 4 Moore, 453.

### DIVORCE.

*Colonial Appeal*.—*Practice*.—The Charter of Justice of the Mauritius gives no right of appeal to the Queen in council from a sentence of divorce.

But the Crown can, upon special petition for that purpose, grant such leave. Appeal granted by the *Cour d'Appel* in the Mauritius from a sentence of divorce, *à vinculo matrimonii*, upon petition of respondent, discharged as incompetent. But on special petition, leave to appeal granted by the Judicial Committee, upon terms of the appellant's lodging his printed case within a given time, or the appeal to stand dismissed. *D'Orliac v. D'Orliac*, 4 Moore, 374.

### DOMICILE.

See *Will*, 1.

### ECCLIASTICAL COURTS.

*Practice*.—The rejection of a witness in the course of the hearing of a cause in the Ecclesiastical Court, on the ground of interest, is not of itself an appealable grievance, the hearing being one continuous act, and an appeal being competent, after sentence, from any compartment of the cause.

A party in a cause in the Ecclesiastical Court, in consequence of the rejection by the court of a material witness, withdrew himself from the further contest of the cause; the judge decreed the cause in pain of his contumacy. *Held*, by the Judicial Committee, that such withdrawal was not contumacious, so as to preclude him from his right of appeal from the sentence. *Hundley v. Edwards*, 4 Moore, 407.

Cases cited in the judgment: *Barry v. Butlin*, 1 Moore, 98; *Harrison v. Harrison*, 3 Curt. 1.

And see *Marriage*,

### EVIDENCE.

See *Will*, 2.

### FOREIGN LAW.

*Lower Canada*.—*Practice*.—*Registration*.—The firm of S. & W. H., in Lower Canada, being indebted to J. W., transferred 75 promissory notes to a factor, on his account. At the time of the transfer S. & W. H. were *en déconfiture*. A *saisie arrêt* having subsequently issued by order of the creditors of S. & W. H., the 75 notes in the hands of the factor were attached. *Held*, by the Judicial Committee, that the transfer having taken place before the execution of the *saisie arrêt*, was valid by the French law in force in Lower Canada.

A commission for examination of witnesses in Canada, to prove such *déconfiture*, in the circumstances, refused.

*Semble*. By the old French law, prevailing in Lower Canada, all *Ordonnances* not registered are void. *Hutchinson v. Gillespie*, 4 Moore, 378.

### MARRIAGE.

*Spiritual Court*.—*Sentence*.—The validity of a sentence passed in 1816, by the Consistory

Court of London, decreeing a divorce, *à vinculo*, in a suit of nullity of marriage, may be impeached in a suit brought in 1842, in the Prerogative Court, for granting letters of administration, by the issue of the marriage, pronounced null and void by the sentence of 1816.

But in order to set aside such sentence, collusion between the parties, and fraud practised thereby upon the court, must be satisfactorily shown.

An allegation, impeaching a sentence, and pleading facts which, if proved, might amount to fraud, but not collusion, rejected. *Meddowcroft v. Huguenin*, 4 Moore, 386.

Case cited in the judgment: *Thomas v. Ketterliche*, 1 Ves. sen., 333.

#### OFFICER OF THE COURT.

By a general order, made on the equity side of the Supreme Court of Madras, it was ordered that, "whenever it shall appear that the property of any infant is unprotected, and not secured for his or her benefit, the registrar shall, with the previous consent of the court, or a judge, institute proceedings on behalf of such infant, for the purpose of protecting his or her person or property." In pursuance of this order, the Registrar of the Supreme Court, upon petition, obtained an order giving him liberty to file a bill in the equity side of the Supreme Court, as the next friend, and on behalf of infants, for an account of the estate of their father, who died intestate, against their mother, the administratrix; and notwithstanding an appeal against such order, such bill was filed, to which the defendant put in a plea, which being overruled, a further appeal from such decision was interposed to her Majesty in council.

By the practice of the Supreme Court, the registrar is entitled to a commission of 5 per cent. on all sums of money paid into court. *Held*, by the Judicial Committee, that the order of the equity side of the Supreme Court, being made under the general jurisdiction of the Supreme Court, and not under the stat. 2 & 3 Vict. c. 34, was void, it being against public policy to allow an officer of the court to institute suits in the conduct of which he might have a direct personal interest, and the orders made in pursuance thereof reversed. *Kerakoose v. Serle*, 4 Moore, 459.

#### PATENT.

Term of letters patent, for refining sugar by filtration through beds of granulated animal charcoal, extended for six years, on the ground of the advantage the public had reaped from the discovery, notwithstanding that the novelty of the invention was small.

Where the party applying for an extension is resident abroad, and has no manufacture in England, advertising in the newspapers published in the towns or county where the persons to whom he has granted licenses are resident, is a sufficient compliance with 5 & 6 W. 4, c. 83, s. 4. *Derosne's Patent*, in re, 4 Moore, 416.

#### RATES.

See *Church-Rate*.

#### SLAVE TRADE.

*Abolition Act*.—A party attached for nonpayment of costs decreed against him in an appeal under the Slave Trade Act, in which the Crown and the captors were the respondents, upon supersedeas by the Crown, ordered to be discharged out of custody, notwithstanding the captors' objection to the crown receiving costs out of the proceeds of the sale of the vessel condemned. By the 44th section of 5 Geo. 4, c. 113, the captors of a vessel employed contrary to the provisions of the act, are only entitled to a moiety of the proceeds of the sale thereof, after deducting the costs of the prosecution. *Jennings v. Hill*, 4 Moore, 369.

#### WILL.

1. *Domicile*.—*Republication*.—A domiciled Englishman (while resident at Milan) executed, in October, 1838, a codicil, disposing of personal property situate in the United States of America. This codicil was holograph, signed, though not attested, but was well executed according to the Austrian law. *Held*, by the Judicial Committee (affirming the judgment of the Prerogative Court,)—1st, that the validity of the codicil was to be governed by the law of the domicile; and 2ndly, that the provisions of the 1 Vict. c. 26, applied to testamentary papers made in foreign countries by a domiciled Englishman.

Testator, by his will, made in 1823, directed his executors to pay any legacies he might afterwards give by any testamentary writing, witnessed or not; and, after making various codicils, he, in 1838, made a codicil, which was signed, but not attested; and by a further codicil, in 1839, duly signed and attested, he declared that he thereby "ratified and confirmed his said will and codicils. *Held*, that such general reference was not sufficient to identify and incorporate the codicil of 1838 in that of 1839, and probate of such codicil refused. The stat. 1 Vict. c. 26, extends generally to wills made previously to the passing of the act, where alterations have been made affecting such bills, subsequent to the 1st of January, 1838. *Croker v. Marquis of Hertford*, 4 Moore, 339.

Cases cited in the judgment: *Brooke v. Kent*, 3 Moore, 334; *Andrews v. Turner*, 3 Q. B. 177; *Wilson v. Marryatt*, 8 T. R. 31; *Maltass v. Maltass*, 3 Curt. 231; *Habergham v. Vincent*, 2 Ves. jun., 231; *Smart v. Prujean*, 6 Ves. 561.

2. *Evidence*.—The *factum* of a will, held under the circumstances of the case, to be sufficiently proved, though one of the subscribing witnesses deposed that he did not see all that the testator wrote, only the large initials of his christian name; and the other witness stated, that she did not see what he wrote, but that he acknowledged the paper to be his will, in their joint presence. Evidence of illiterate witnesses as to acts affecting their interests, when opposed to the probable acts of an educated man, no fraud being in question, is to be received with great caution. The bill contained alterations and erasures, affecting the amount and

objects of the testator's bounty, the existence of which, at the time of the execution, the attesting witness could not depose to: *Held*, by the judicial committee, in the absence of all direct evidence as to the alterations and erasures, that the presumption of law was, that such alterations and erasures were made after the execution of the will, and probate of the will granted in its original form. *Cooper v. Brockett*, 4 Moore, 419.

Case cited in the judgment: *Larkins v. Larkins*, 3 B. & P. 16.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### House of Lords.

*Hon. H. Trevor v. Hon. G. Trevor.* June 28, 1847.

DEVISE. — "ISSUE." — "ISSUE IN TAIL MALE."

THE following is the opinion delivered by the judges on the question of law propounded to them in this case by the House of Lords:—

*Lord Chief Justice Wilde.*\*—The question proposed by your lordships has reference to a statement to the effect, that George Rice Rice Trevor died leaving no son, but leaving one daughter who had a son who attained 21; and that the mother and son have agreed to sell the Bedfordshire estates to A. B., and to make a good title thereto, and have brought an action

and her son, can, with the concurrence of the trustees, make a good title to those estates?

In answer to that question I have to state, that it is the unanimous opinion of the judges who heard the argument at your lordships bar, that a good title can be made by the parties mentioned in the question to the estates therein referred to.

The answer to your lordships' question depends upon the construction of the devise of the Bedfordshire estates, contained in the second will of Lord Hampden, which devise is expressed in the following words: "I give and devise unto General the Hon. Henry Brand (meaning the appellant) and Joseph Rogers, gentleman, and their heirs, all and every my real estates in the county of Bedford, whether freehold or copyhold, upon trust, that they or the survivor of them, or his heirs, do and shall

settle and convey the same to the use of or in trust for the Hon. George Rice, son of Lord Dynevor (now the respondent the Hon. George Rice Rice Trevor) for life, without impeachment of waste, except permissive waste or spoliation, with remainder to his issue in tail male, in strict settlement, upon condition that all person or persons from time to time to come into possession of the said settled estates do and shall, within one year afterwards, take the name and bear the arms of Trevor. And also, upon the like condition to that I have made in my will of my Sussex estate, so far as the change of circumstances will permit, that the said estate shall go over to the party next entitled, or the person for the time being possessed becoming entitled, to the barony of Dynevor; and in default of such issue of the said George Rice, I devise my said Bedfordshire estate unto the said Henry Brand, his heirs and assigns for ever."

The question upon this devise is, whether under the word "issue" or the words "issue in tail male" sons are only comprised, or whether daughters as well as sons were intended to take?

The trusts in the will being executory, it is clear George Rice Rice Trevor was not entitled to more than a life estate, and that his issue, whether males only or males and females, were to take by way of remainder as purchasers. It is not contraverted that the word "Issue" in its ordinary and proper sense includes all descendants, however remote, and includes females as well as males. That such is the proper construction of that word is too well established to render it necessary to refer to authorities upon the subject. In this will, purchase is

part of the appellant that the "issue" in this will cannot be in any manner severed in construction from the words "in tail male" which follow it; and that the words "issue in tail male" must be considered as one entire and indivisible expression, describing the first takers and the estate to be taken; and, consequently, that the parties thereby designated as the first purchasers are the issue male, or sons of George Rice Rice Trevor, to the exclusion of the daughters.

The respondents contend that the word "issue" is used in its natural and admitted ordinary sense, including females, and that such sense is not varied, or in any respect affected by the words "in tail male." That the word "issue" expresses the parties to take, and the words "in tail male" the estate to be taken.

It seems to be agreed that the construction of the devise as to the point submitted to the judges is not affected by the words "in strict settlement;" and we think that it is not.

The devise, if read in the manner contended for by the appellant, must be deemed to be framed in a very untechnical and inaccurate manner. The issue are to take as purchasers, and the word "issue" is a proper and apt word to

\* The following judges were also present:—Mr. Baron Parke; Mr. Baron Alderson; Mr. Justice Patteson; Mr. Justice Coleridge; Mr. Justice Coltman; Mr. Justice Maule; Mr. Baron Rolfe; Mr. Justice Wightman; Mr. Justice Cresswell; Mr. Justice Erle; Mr. Baron Platt; and Mr. Justice Vaughan Williams.



describe those who are so to take; but "issue in tail male" is not an usual or apt form of expression to describe the first taker of an estate tail. "Issue in tail male" is an expression only correct when used in reference to an estate already settled; "Issue in tail male" being the ordinary and correct form of expression to describe one taking by descent under an estate tail vested in the ancestor; and the words "issue in tail" are used in this sense and as contrasted with the ancestor or first taker by Lord Coke in the passages which have been referred to and in the text books. Lit. Sec. 638-642. Co. Lit. 326 b. 327 a. 327 b.

The question in this case seems to be narrowed to the point, whether in construing this devise the word "issue" is to be read in its ordinary sense, as including females as well as males, or whether, by the addition of the words "in tail male" in immediate connexion with the word "issue," or from other parts of the will, it is manifested that the word "issue" was not used in such ordinary and usual sense, but in a restricted and limited sense, as including males only.

It cannot be necessary to cite any of the numerous determinations in which the rule of construction has been recognised in the courts of law and equity, and affirmed by your lordships' house, that in a will, words, whether technical or otherwise, are to be understood as used in the sense ordinarily and properly applied to them, unless from the whole context of the will it shall appear satisfactorily and clearly that the words to be construed have been used, and were intended to be understood in some other sense.

We are of opinion that the word "issue" was used in the present will in its ordinary sense, and comprised females as well as males, and that such meaning is not controlled or affected by the words "in tail male" which immediately follow the word "issue," or by any other part of the will.

The words "issue in tail male" were a convenient and not incorrect form of expression to denote the first purchasers, and the estate to be taken. The takers by the word "issue." The estate to be taken by the words "in tail male." There is no reason against an estate "in tail male" being limited to a female, or an estate in tail female to a male, and the limitation of an estate tail of one kind or the other has no necessary effect in denoting the sex of the first taker, the effect of the words of such limitation not being to describe the first taker, but simply to make the course of descent from such first taker. If the word "issue" may be correctly construed as describing the first purchasers, and the words "in tail male" be a correct legal description of the estate to be taken by such purchasers, there should be found some very distinct and substantial reason for so construing the entire expression, as to render it an incorrect form of devise.

Therefore, as an estate in tail male may be limited to a daughter as well as to a son, and as daughters come within the description of

issue, there seems no good reason according to the ordinary rules of construction for deeming this devise ambiguous.

The argument on the part of the appellant to prove that the devise in question ought to be read as including males only has been mainly derived from other parts of the will, and especially from those parts which refer to the disposition and limitations relating to the Sussex estates contained in the first will, and in showing that the testator has limited those estates to males only, and from thence inferring that the testator intended to limit the Bedfordshire estates also to males only.

We think it would be dangerous, and lead to a great uncertainty in construing a devise relating to one estate, to infer an intention not expressed in it, from the intention apparent in regard to a totally independent estate, and devised in terms altogether different; but we see no ground for inferring an identity of intention on the part of the testator in regard to the two estates. Indeed as it appears that the first will is distinctly, aptly, and correctly framed to effectuate the intention of limiting the Sussex estates to descendants through males only, the reference to the terms of that will appears to the judges to afford arguments rather opposed to the appellant's construction of the devise in question, than in support of it.

The numerous and important authorities regarding the true rules of the construction of wills, determine that a departure from the ordinary meaning of the words contained in it should only be adopted from necessity and in cases where the context or other parts of the will satisfactorily manifest that the language of the will has been used in some other than such ordinary sense, and adopting the principles of those decisions, many of which have received the sanction of this house, the judges are unanimously of the opinion I have before expressed, namely, that the only daughter of George Rice Rice Trevor and her son mentioned in the statement, with the concurrence of the trustees, can make a good title to the Bedfordshire estates.

Lord Chancellor.

Cope v. Russell. May 22nd, 1847.

#### SUBSTITUTED SERVICE.

*In a suit, the object of which was to render a judgment obtained in an action at law a charge upon the real estate of the defendant who was out of the jurisdiction, the court refused to allow substituted service of subpoena upon a person who had been the defendant's attorney in the action, but who was not proved to be still his agent.*

Mr. R. Levinge Swift stated that this was an application for leave to serve the defendant's attorney in a previous transaction with a subpoena to appear to the plaintiff's bill, under the following circumstances:—The plaintiff had obtained judgment against the defendant in an action at law, to restrain which the defendant had filed a bill which was ultimately dismissed,

and the plaintiff now sought by his present suit to render such judgment a charge upon the defendant's real estate. The defendant was out of the jurisdiction, and the party upon whom it was wished to effect the substituted service had been his attorney in the said action, and his solicitor in his suit to restrain it. Mr. Swift read extracts from a correspondence, but could not produce any evidence that this party still acted for the defendant. He contended that the subject-matter of the action and this suit was the same, and he cited *Hobhouse v. Courtney*, 12 Sim. 140; *Hornby v. Holmes*, 4 Hare, 306; and *Murray v. Vipart*, 1 Phill. 521.

The Lord Chancellor said, that there must be something to show that the party upon whom service was to be substituted had been authorised by the defendant to accept it. In *Hobhouse v. Courtney*, (*suprà*), there was a power of attorney given; and in *Murray v. Vipart*, (*suprà*), there was an acting in the same suit. But here the suit was at an end, and the correspondence merely showed that the former attorney and solicitor now merely considered himself as a channel of communication between the plaintiff and defendant. From the short statement of the facts in the report of *Hornby v. Holmes*, it was difficult to ascertain them, but in *Hobhouse v. Courtney* all the cases had been carefully reviewed by the Vice-Chancellor of England, and if the former case went further, his lordship should not be disposed to follow it. Nothing could be more dangerous than to make such an order as was now required in the absence of any evidence showing that the party sought to be served was the defendant's agent; but if any further evidence should be procured, the plaintiff might make a short application to the court.

Motion refused.

#### Vice-Chancellor of England.

*Knill v. Chadwick*. June 21, 1847.

#### DEMURRER.—MULTIFARIOUSNESS.

Where a bill prays for a general account, as against two defendants, and it appears that one of them is connected with the plaintiff, merely as being the endorsee of a bill of exchange accepted by plaintiff. A demurrer for multifariousness allowed.

In this case, the plaintiff had been engaged in certain railway contracts with Chadwick, and money transactions had taken place between them, and a bill for 1,500*l.* drawn by Chadwick was accepted by plaintiff, and endorsed to Nicholson, another defendant. Nicholson commenced an action against plaintiff, on the bill, upon which plaintiff filed his bill in equity, making Nicholson a defendant. The bill stated that various money transactions had taken place between plaintiff and defendant Chadwick, and that plaintiff had signed many bills of exchange for which no consideration had been given; and that one of such bills was

the one for 1,500*l.* endorsed over to Nicholson; it also charged that Nicholson was a trustee for Chadwick, and prayed for a general account as against Chadwick and Nicholson, and that Nicholson might be restrained from proceeding with his action. To this bill Nicholson demurred for multifariousness.

Mr. Wickens, in support of demurrer, contended that as the bill prayed for a general account, and defendant Nicholson had nothing to do with any of the other transactions which took place between plaintiff and Chadwick, it was clearly multifarious. He cited *Miller v. Walker*, 9 Jurist 197.

Mr. Prior, *contrà*, urged that defendant Nicholson was so mixed up with all the transactions that had taken place between plaintiff and Chadwick, that the only remedy plaintiff had was to have a general account as against both defendants, and that it sufficiently appeared from the bill that plaintiff was entitled to such an account. He cited *Attorney-General v. Corporation of Poole*, 4 Myl. & Cr. 17; and *Turner v. Robinson*, 1 Sim. & St. 313.

The Vice-Chancellor said it appeared to him that all the matters alleged in the bill, except as regarded the transaction with respect to the bill for 1,500*l.*, were things with which the defendant Nicholson had nothing to do, and that the claim which arose on that bill for 1,500*l.* was totally distinct from any account as between plaintiff and defendant Chadwick. If the plaintiff had any equity as against Nicholson, he might have brought it forward by a bill in equity. Demurrer allowed, with costs.

#### Queen's Bench.

(Before the Four Judges.)

*Doe dem. Hemming and others v. Barratt*.  
Easter Term, 1847.

EJECTMENT.—COSTS.—1 & 2 VICT. c. 110,  
s. 18.

In an action of ejectment in which a verdict was found for the defendant, costs taxed, and the Master's allocatur for the amount indorsed on the consent rule, which was served on the attorney for the lessors of the plaintiff, and the amount not being paid on demand made on one of the lessors of the plaintiff, the defendant issued a writ of fieri facias.

Held, this was an order for the payment of costs under the 1 & 2 Vict. c. 110, s. 18, and the court discharged a rule obtained for the purpose of setting aside the writ for irregularity.

THIS was an action of ejectment in which a verdict was found for the defendant, but a writ of error was pending. The costs were taxed, and the Master's allocatur for the amount of the costs was made and indorsed on the consent rule, which was served on the attorney for the lessors of the plaintiff, and demand made on

one of the lessors of the plaintiff, there being reversal. The costs not being paid, a writ of *fi. facias* issued, in pursuance of the statute 1 & 2 Vict. c. 110, s. 18. A rule *nisi* was afterwards obtained to set aside the writ of *fi. fa.* for irregularity, with costs.

Mr. Wallinger showed cause, and contended that the writ of *fi. fa.* had properly issued in pursuance of the statute 1 & 2 Vict. c. 110, s. 18. The cases of *Jones v. Williams*,<sup>a</sup> *Hawkins v. Benton*,<sup>b</sup> are cases of awards where the courts have said that it was not a necessary consequence of the submission to arbitration that any money would become payable. But the cases of *Jones v. Williams*,<sup>c</sup> *Doe v. Bradley*, and *Hodson v. Patterson*,<sup>c</sup> are strong authorities to show that where the master has taxed the defendant's costs on the consent rule, nothing further remained to be done, and that the writ of *fi. fa.* properly issued.

Mr. Hurlstone *contra*. It is part of the consent rule that if a verdict shall be found for the defendant, or the plaintiff shall not further prosecute his writ, that the plaintiff shall pay the costs to be in that case adjudged. This depends on a contingency, and contemplates something more being done. [*Wightman, J.* That is supplied by the master's allocatur.] This is not an order for the payment of costs under the statute of Victoria. The principle of *Jones v. Williams*<sup>d</sup> is the same, and that objection would apply. The consent rule forms no part of the record, and cannot be made such in any part of the proceedings.

Lord Denman, C. J. I do not think that there is any irregularity in these proceedings. The case of *Jones and Williams* seems to me clearly distinguishable.

*Patterson, J.* In *Jones v. Williams* it was only the submission to arbitration which was made a rule of court, but this is a common rule for the payment of costs which I think comes within the very terms of the act of parliament.

*Wightman and Erle, J.'s*, concurred.

Rule discharged.

### Queen's Bench Practice Court.

*Ex parte Weymouth.* June 7th, 1847.

ATTORNEY.—STAMPED CERTIFICATE.—NOTICES.

*Where an attorney has neglected to procure a stamped certificate to practise within twelve months from the time of his admission, the court will, under special circumstances, dispense with his giving the requisite notices under the rule of Easter Term, 1846, and allow him to take out his certificate at once, without payment of any arrears.*

H. T. Cole moved for a rule calling on the registrar to issue his certificate to the Commissioner of Stamps to enable Mr. T. Weymouth, an attorney of this court, to take out his stamped certificate to practise, without giving

the notices required by the rule of Easter Term, 1846. The application was made on affidavits which stated that Mr. Weymouth was admitted an attorney of this court in Easter Term, 1846, and had up to the present time neglected to procure a stamped certificate. Ever since his admission he had been acting as a clerk to his father, an attorney practising at Kingsbridge, Devon.

When the new County Courts Act was brought into operation, Kingsbridge was selected as one of the towns in which a district court should be held, and Mr. T. Weymouth was anxious to practise in that court for his father, as he was to do so, having more important professional engagements to attend to. It was, however, sworn that the judges of the district courts, and particularly the judge of the district court holden at Kingsbridge, had decided not to allow any one to address the court or assist a suitor there in any way, unless he were a barrister or a solicitor duly authorised to practise. It was further sworn that Mr. T. Weymouth did not become acquainted with this decision of the judge until too late for him to give his notices pursuant to the rule of court of Easter Term, 1846, so as to enable him to apply at the end of the present term for his stamped certificate to practise; and that it would injure him in his profession of an attorney if he was prevented from practising in said County Court of Kingsbridge until after the next Michaelmas Term. It was also distinctly sworn, that Mr. T. Weymouth had never, either directly or indirectly, practised in his own name or on his own account. It was therefore submitted that, under these circumstances, the court would, if it had the power to do so, dispense with the usual notices, and allow Mr. T. Weymouth to take out his stamped certificate at once.

Mr. Justice Wightman, after consulting the Master, granted the rule, and without payment of any arrears.

Rule absolute to take out the certificate at once, without giving any notices or paying any arrears.

### Common Pleas.

*In re Kinning.* Trinity Term, June 4, 1847.

SMALL DEBTS ACT.—PAYMENT BY INSTALLMENTS.—SUMMONS OR NOTICE TO DEBTOR BEFORE COMMITTAL.

*A creditor seeking, under the provisions of the Small Debts Act, 8 & 9 Vict. c. 127, s. 1. to obtain an order of committal against his debtor for default in not paying an instalment of his debt at the time duly fixed for that purpose, must first serve a summons or notice on such debtor, stating his intention to apply for such committal.*

*Where therefore a judge, having jurisdiction under the provisions of the said act, granted a warrant which simply set forth that the debtor had not paid the amount of the first instalment as directed by the order made for that purpose, although the time of the pay-*

<sup>a</sup> Adol & Ellis, 175. <sup>b</sup> 2 Dowl & Lownd, 465.

<sup>c</sup> 8 Mee. & Wel. 349. <sup>d</sup> 1 Dowl, N. S. 259.

<sup>e</sup> 4 Man. & Gr. 333. <sup>f</sup> 11 Adol & Ellis, 175.

*ment thereof had elapsed, and the same had been duly demanded of the said debtor, &c., without its appearing that the debtor had been previously summoned to show the cause of his default: Held, that the imprisonment under such warrant was illegal, and the debtor entitled to his discharge.*

tain in the said prison for the space of 40 days from the time of his arrest under this warrant, or until he shall be discharged out of custody by leave of me; and for so doing this shall be your sufficient warrant.

"Given, &c.

"EDWARD BULLOCK,

"Barrister-at-law, and Judge of the said Court.

"To Lloyd Simpson, serjeant-at-mace, and to Thos. Burden, keeper of the debtors' prison aforesaid, or his deputy there."

The statute under which the warrant was granted, was the 8 & 9 Vict. c. 127, entitled "An Act for the better securing the payment of Small Debts." The first section provides that in cases of debt by force of a judgment, or order of a court of competent jurisdiction, the creditor may obtain a summons from any of the commissioners or courts therein specially named, within the jurisdiction of which the debtor shall reside or be, &c., according to the form in schedule A to the act annexed, &c., and the debtor appearing before such court or commission, at the time appointed in such summons, shall be examined and interrogated, &c., touching the manner and time of his contracting his debt, the means or prospect of payment he then had, the property or means of payment he still hath or may have, the disposal he may have made of any property since contracting such debt; and such creditor shall also be interrogated, if necessary, &c., touching the said claim against the debtor; and it shall be lawful for the commissioner or court to make an order on the said debtor for the payment of his debt by instalments or otherwise; and in case such debtor shall not attend, &c., or, if attending, refuse to disclose his property, &c., or if he appears to have the means of paying the same by instalments or otherwise, and shall not pay the same at such times as the commissioner or court shall order, &c.; then it shall be lawful for such commissioner or judge of such court to order such debtor to be committed for any time not exceeding 40 days to the common gaol, &c.

*Pashley*, on behalf of the prisoner Kinning, now moved for his discharge. (There were several grounds of objection; the following, however, was the only one on which the court decided.<sup>a</sup>) The commitment, it is submitted, is bad, inasmuch as it had been made without any notice to the prisoner of an intention to apply for a warrant of commitment, or any summons or notice, by which he was afforded an opportunity of explaining how it was that he had made the default for which he was imprisoned. It was contrary to every principle of English law that a

<sup>a</sup> On the same ground of objection, as well as on another of those raised, the prisoner had been remanded to prison in the Court of Queen's Bench on the day the writ in the present case was obtained, the judges of that court having been equally divided in opinion.

A WRIT of *habeas corpus* was yesterday obtained in this case, directed to the keeper of the debtor's prison of London, commanding him to bring up the body of Thomas Kinning, a prisoner in his custody for debt, and to return the cause of his imprisonment. Accordingly, the prisoner was brought up to-day, and the return to the writ showed, as the cause of his imprisonment the following warrant of commitment:—"Whereas Thomas Kinning, of Fleet Lane, Farringdon Street, in the city of London, on the 7th day of December last, being indebted to William Townley, &c., in a sum not exceeding 20*l.*, besides costs of suit, that is to say, in the sum of, &c., by force of the judgment hereinafter mentioned, and then being in Fleet Lane, in the city aforesaid, and within the jurisdiction of this court, was duly summoned to appear on, &c., at this court to answer such questions as might be put to him touching the not having paid to the said W. T. the sum of money recovered in a certain judgment of this court, on, &c., and the said T. K. having appeared before me at the time and place aforesaid, and it thereupon then appearing to me by the admission of the said T. K., that the said T. K. had the means of paying the said debt and costs aforesaid in manner thereafter mentioned, I did then and there order that the said Thomas Kinning should pay the said debt and costs aforesaid to the said William Townley, in manner following, that is to say, the sum of 2*l.* part thereof, on the 12th day of January then next, and the residue thereof by instalments of 2*l.* on the 12th day of every subsequent month until the said debt and costs were fully paid: And whereas it has this day, at this court, been duly proved before me that the said T. K. has not paid 2*l.*, the amount of the first instalment as directed by the said order, although the time of the payment thereof has elapsed, and the same has been duly demanded of the said T. K., and the said T. K. has been personally served with a copy of the said order, and the original order was at the same time shown, and that 2*l.*, the amount of the first instalment, is still due, owing, and unpaid to the said W. T., contrary to the tenor and effect of the said order; these are, therefore, to require and authorise you, immediately upon the receipt hereof, or as soon after as may be, to take into your custody the body of the said T. K., and him safely to convey to her Majesty's Debtors' Prison of London and Middlesex, in the city of London, being the common gaol wherein the debtors under judgment and execution, &c., may be confined within the city of London, being the city within which the said T. K. hath been resident, and there to deliver him to the keeper of the said prison, who is hereby &c., and him safely to keep and de-

man should be imprisoned without having been first heard. Besides, in the present case, the clear intention of the statute was that an inquiry should, in the first instance, be made as to the debtor's means of paying at the time when the instalments became due. At most it was like a case of a contempt; and under the terms of the act, the simple production of the order to pay by instalments showed no contempt. The dictum of Mr. Baron Alderson in the case of *ex parte Foulkes*, 15 L. J., N. S. Exch. 300, will be relied upon on the other side; but it is submitted that can be no authority against the present application. Then, on the other hand, the cases of *Rex v. Smith*, 5 Q. B. 614; *Capel v. Child*, 2 Cr. & J. 588; *Harper v. Carr*, 7 T. R. 270, were direct authorities to show that a party in the position of the prisoner here should have been summoned before granting the warrant of committal.

*Petersdorff*, contra. It seems to be taken for granted that the proceedings under the statute in question were of a penal character, but it is submitted the statute was not of that nature. The present commitment bears a strong analogy to an arrest on mesne process, for the purpose of obtaining bail. In both cases the intervention of a judge is necessary, and here, as there, only an *ex parte* inquiry is required, there being no words in the statute to render necessary the intervention of a summons before issuing the warrant of commitment. The order of commitment was only a limited kind of *ca. sa.* as was laid down by Mr. Baron Alderson in the case of *ex parte Foulkes*. There is no more injustice in the present mode of proceeding than on an arrest on mesne process, and to give notice to the party would frustrate the very object of the act, which was to facilitate the recovery of debts. On the other objections raised he was stopped by the court.

*Wilde*, C. J. The court looks very nicely at the question which arose on this part of the statute, when it was said that it had been before another court, which could not come to a satisfactory conclusion on the question, very learned persons differing in the view to be taken of the statute. I think the return is not sufficient, and that the prisoner is entitled to be discharged by reason of the deficiency of the warrant on which he was taken into custody. The statute in question is, to a considerable extent, penal, because it gives the imprisonment not alone by way of the satisfaction of the debt. If a party be taken under a writ of *ca. sa.*, the imprisonment suffered under that, is a satisfaction of the debt; but here, apparently, the imprisonment is used merely by way of punishment or coercion, and it is to vary according to the circumstances of each particular case. It appears from the first section of the statute in question, that if a party wishes to enforce payment of his debt, he is to apply to some one of the courts mentioned for an order on his debtor, who is to be first summoned and subjected to an inquiry as to certain matters, one of which is his means of paying.

The judge is then to exercise his discretion with regard to the time to be given for payment of the debt, that discretion being apparently to depend on the individual's means to pay. The power of commitment is pointed out by the act in certain specified cases, and amongst others it applies to where it is found that the debtor has the means to pay, and will not. It appears, then, that the party's means are to be judged of with reference to the period when he was ordered to pay, and it is obvious that it is equally material at each time of payment, when the days are fixed, to know whether the party has the means of payment. The statute only deals with the person of the debtor, and leaves all other proceedings as to his property, under the old acts, unaltered. It was apparently passed much with the view of punishing fraud, and gives the remedy of commitment only when the debtor withholds a debt which he is able to pay. It is based on the inhumanity of sending a person to gaol who had not the means of paying; but where it appears that the party has the means of paying by instalments, and shall not pay at the time fixed for payment, then he may be committed. It is necessary, in order to direct the judge's discretion as to the periods of payment, that he should inquire into the circumstances of the debtor as to his future probable means, because the act presupposes no present means to pay all the debt, and only on that presumption authorizes the granting of time for payment. When, therefore, time is granted, it must be with reference to the party's means to pay at the periods when the payments are to be made. Then it further appeared from the act, that if payment be not made according to the order, the judge had power to commit for a term not exceeding 40 days. Now, what is to regulate the judge in prescribing the time, what is to be the ground of the judgment to be formed with regard to the time of committal? Can it be doubted that the party's means to pay must be the only essential point of inquiry? and if that be so, how can you make an effectual inquiry into the party's means, unless you hear the party who must best know his means, and may be the only person who does know? The period of commitment being discretionary, it presupposes a previous inquiry; and if so, common justice seems to require that a person who possesses the fullest means of answering the inquiry, should appear. It may make the most material difference whether the commitment be for two weeks or for forty days; and it seems to follow that a party who possesses the best means of knowledge, and had the deepest interest, should be summoned and heard. The ground of the statute, taken all together, rests on the principle that a debtor shall not be imprisoned for a debt which he had not the means to pay; and therefore, it appears to me the proper and sound construction is, that a debtor must be summoned when he makes a default in payment, and the creditor applies for a committal, in order that the judge may know what is the proper period of imprisonment.

*Coltman, J.* This appears to me to be a very clear case. The act done is a judicial, and not a ministerial act, and, according to general principles, such as is laid down in *Harper v. Carr*, 7 T. R. 270, it could only have been regularly done after hearing what the party had to say on the other side. The only argument used to the contrary was, that to do so would, in a case like the present, be very inconvenient, because to give notice to the debtor would, in effect, be to tell him to abscond; but I do not think that it is practically probable that such would be the effect; for all the cases within the jurisdiction in question, are those of extremely small debts. Considering how highly penal the statute is—that a debtor may be imprisoned, *toties quoties*, until he has paid the debt—I am not disposed to depart from ordinary principles; and therefore, it seems to me, there ought in this case to have been an inquiry before committing for any time. The judge should have been aware of all the circumstances which could have been brought before him as to the default made; and as that was not done, the prisoner must be discharged.

*Maule, J.* I am also of opinion, that on the substantial objection taken, the defendant is entitled to his discharge. The power of commitment given by the statute was intended to be exercised in the particular cases of fraud in the conduct of the debtor, of the nature therein pointed out,—the not doing something which he is bound, both legally and morally, to do,—the not paying when he is able to pay. The commitment is by way of punishment and coercion, and ancillary to the payment of the debt. Now certainly, upon any general principle of law, it would be necessary that the party, before he is punished for misconduct, should be heard; and if the order to commit had been made after the proceedings under the summons mentioned in schedule A of the statute, the debtor here would have had an opportunity of being heard. Now, the ability or non-ability to pay when the instalments become due, could not be ascertained under that summons, and it must be taken that non-payment of the instalments when the party had the means of paying, constituted the offence. That being so, to commit the debtor without his being heard, or any notice given to him, would be contrary to the general principles of the laws of England, and even to natural justice; and the question then is, whether there is anything to take this case out of those general principles. In the express provisions of the act, certainly there is nothing. It was true that the act for holding persons to bail did infringe on those general principles; but that was because it was thought that greater advantage would be obtained by preventing fraudulent persons from flying the country; and the power is there given in terms which leave no doubt at all; besides which, that act gives a speedy remedy, by appeal, to a party who is improperly arrested, whilst under the present statute the only mode for a party to obtain his

discharge, is under the third section. *M. Petersdorff* could not deny that a second inquiry, *ex parte*, was required. Now, it would be a strange thing that there should be such an inquiry required, and that the act should not also secure an opportunity for calling upon the debtor to show, if he could, that he had really no means of paying; yet that would be the state of the law to which the construction would lead, if adopted. That being so, and the words of the statute not excluding the summoning and hearing of the debtor, I think the general principles of law must apply, and that the party here ought to be discharged.

*Cresswell, J.* I am of the same opinion. It is unnecessary to say whether an order to commit might have been embodied in the order to pay, made in the first instance. If the judge possessed such power, he had not exercised it, but had simply made an order for payment without any statement as to what was to be done in the event of the party's not obeying. Then, subsequently, it appeared, an order was made for committing the party without any inquiry or notice to show cause as to whether the party had means of any kind to meet the payment. I think that commitment, as a judicial act, was clearly bad, and the prisoner entitled to his discharge.

Prisoner discharged.

#### Court of Exchequer.

*Marks v. Ridgway. Collins v. Ridgway. Trinity Term, May 22, 1847.*

INTERPLEADER ISSUE.—JUDGE AT CHAMBERS.—COSTS.

*Where a judge at chambers has directed an interpleader issue, any subsequent application as to costs, &c., must be made to the same judge, and not to the court.*

IN these cases *Erle, J.*, at chambers, had directed an interpleader issue, and ordered that the sum of 26*l.*, the proceeds of a levy, should be paid into court to abide the event. The interpleader issue was tried and found, as to part, for the claimant, and part for the execution creditor. A rule was then obtained calling on the claimant to show cause why the 26*l.* paid into court in pursuance of the order of *Erle, J.*, should not be paid out of court to the plaintiff, and why his costs should not be paid by the claimant.

*Pashley* showed cause. The application should be made to the judge who directed the interpleader issue. The 1 & 2 Vict. c. 45, s. 2, confers on a judge the same power with respect to interpleader orders as the court previously exercised under the 1 & 2 W. 4, c. 58, and it enacts, "that the costs of such proceeding shall be in the discretion of such judge." The effect of those words was under consideration in the case of *Burgh v. Schofield*, 9 M. & W. 478. He also argued that the application was premature, inasmuch as judgment had not been entered up. *Cooper v. Head Smelting Company*, 9 Bing. 634; *Dickenson v. Eyre*, 7 Q. B. 307; *King v. Simmonds*, ib. 289.

*Miller* in support of the rule. The case of *Burgh v. Schofield* is distinguishable, because there the interpleader order had been abandoned before trial. Here a trial has taken place, and the matter is before the court in the same way as any other issue. In the case of an application for a new trial on the ground of misdirection, or of the verdict being against evidence, the court would interfere. The power of the court in such a case can only be under the statute.

*Pollock, C. B.* If the point were new, I should be disposed to decide it as already decided. But as it is not new, the previous decision of this court is binding on us, and the rule must be discharged with costs.

*Alderson, B.* Where the interpleader order has been made by the court, the subsequent application must also be to the court; but where the order has been made by a judge, the application must be to the judge. If the judge thinks the matter more fit for the decision of the court, the statute enables him to refer it to the court.

Rule discharged.

#### LAW PROMOTION.

THE Queen has been pleased to appoint William Scrope Ayton, of the Middle Temple, Esq., Barrister-at-Law, to be one of the Commissioners of the Court of Bankruptcy, to act in the prosecution of fiats in Bankruptcy in the country.

#### PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

**Royal Assents.** July 2, 1847.

Masters in Chancery.  
Quakers and Jews Marriages.  
London Small Debts.

#### House of Lords.

##### NEW BILLS IN PROGRESS.

Juvenile Offenders. Passed.  
Ecclesiastical Jurisdiction. For 2nd reading.  
Police. For 3rd reading.  
Trustees Relief. In Committee.  
Clergy Offences. To be reported.  
Poor Laws Administration. In Committee.  
Poor Removal. For 2nd reading.  
Tithes. For 2nd reading.  
Copyhold. For 3rd reading.  
Threatening Letters. For consideration of amendments.

#### House of Commons.

##### NEW BILLS IN PROGRESS.

Encumbered Estates (Ireland). Postponed.  
House of Commons Costs Taxation. For 3rd reading.

Insolvent Debtors. To be reported.  
Health of Towns. In Committee.  
Custody of Offenders. Passed.  
Joint Stock Companies. Passed.  
Winding up Joint Stock Companies (No. 2). For 2nd reading.  
Prisons. In Committee.  
Bankruptcy and Insolvency. In Committee.  
Masters in Chancery Affidavit Office. To be reported.  
Registration of Voters. In Committee.  
Parliamentary Electors. For 2nd reading.  
Parliamentary Electors, (No. 2.) For 2nd reading.  
Vexatious Actions. In Committee.  
Poor Removal, (No. 2.) For 2nd reading.  
Trust Monies Investment. For 2nd reading.

#### THE EDITOR'S LETTER BOX.

Notwithstanding the session will probably close without any very important acts affecting the principles of law—and although the threatened reform in Conveyancing and the Law of Debtor and Creditor are postponed for the present—there will still be several projects ripened into statutes which must be submitted to our readers without delay. We shall probably print an occasional extra half sheet (but without any extra charge) in order that such statutes as are useful may be speedily brought to notice and the notes on the alterations thereby effected will follow in due course.

We apprehend that in the case referred to by "A Young Practitioner," the judge of the county court must have been satisfied that the tenant continued to hold over at the time he granted his warrant to give possession. If the landlord had already taken possession the warrant would be wholly inoperative. If the judge came to an erroneous conclusion upon the facts, as we have already had occasion to remark, the law affords no means of setting the matter right by appeal or otherwise.

We are much obliged to T. W. H.

A correspondent calls attention to an advertisement in the *Times* of June 24th, in which it is stated that "A solicitor of some years' standing in the profession, and who is about establishing himself in town would be willing to make immediate arrangements with any respectable party *not duly qualified* for conducting *their* business." The object of the advertiser is so apparent on the face of the advertisement, that we trust some steps will be adopted to detect and punish the delinquent, and prevent *unqualified* persons practising under the name of the advertiser.

In answer to "Apprenticious," a man may be guilty of forgery who signs his own name of "Thomas Jones" to a draft upon bankers in imitation of the signature of Thomas Jones who keeps an account at those bankers.



# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JULY 17, 1847.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT

### LAWYERS IN PARLIAMENT.

BOTH town and country are now busily engaged in the approaching general election for members in parliament, and although there is no great party question particularly predominant,—no very exciting subject, either, on the one hand, of aristocratic interest, or on the other of popular grievance,—yet there is a considerable stir in many constituencies: new candidates are invited, or are presenting themselves; and those classes of the community who are not sufficiently represented, or who think their interests and opinions have not been duly regarded, naturally seek, on the eve of a new septennial election, for the means of improving their position.

It is no province of ours to enter into political controversies. Concerned only in the passing of useful laws and the convenient administration of them, it is immaterial to us, as mere lawyers, how the great political parties are broken up or subdivided.\* The great bulk of the profession is indeed conservative, but in these times it seems of little moment who rules the day. Ultra or moderate Tories, high Conservatives or liberal Conservatives, old aristocratic Whigs or liberal Whigs, are now of comparatively little moment. The Radicals and the Chartists are the only sections against whom the lawyers would lift up their voice on high. Heretofore

the leaders and followers of the various divisions in the political ranks were supposed to represent large or important masses of the community, each professing certain principles, and holding certain doctrines, which they set forth as beneficial to the nation at large. But of late years a considerable number of members of the House of Commons, whilst they may be more or less attached to one of the political sections we have enumerated, are really the representatives of important *class-interests*. The county members may be considered as peculiarly representing the landed interest, and the members for cities and large towns, in various degrees, the interests of trade, commerce, and manufactures. The railway interest comprehends members of all political feelings, and reckons, in point of number, the highest of all class-representation. The manufacturing class—the "Cotton Lords"—come next in importance, with other branches of manufacture. Again, the shipping interest is well represented. And so of other large and wealthy portions of trade and commerce. The great sections in religion are also well supported, and there are quite a sufficient number in favour of the doctrine that all legislation should be purely secular.

Turning to the professional classes, we find the interests of the Church well provided for, through the medium of the great universities of which they are members. The army and navy also have their able defenders, from captains to field-m Marshals. It might be reasonably inferred also that the whole legal profession was fully and fairly represented by the law lords in the upper

\* A member of the bar, afterwards an excellent judge, was pressed in a social meeting of the brethren as to his political opinions,—“Now tell us, *what* are you?” said they: “I am a *special pleader*,” said he.

house, and by 40 or 50 barristers in the lower. The feeling, however, appears to be very general, both among the junior bar and the attorneys and solicitors, that the leaders of the long robe, however high in character, eminent in talents, or profound in learning, are mainly seeking their own personal advancement, rather than the honour of their profession, or the real improvement of the administration of justice. Other men work for a general purpose, — the success of their party, the promotion of certain political principles, or public objects; but the lawyers in parliament, with rare exceptions, seem each to represent only his own personal interests. We do not blame them individually. The fault lies not so much in them as in the present system of law promotions. Unhappily the eminent positions on the bench are, for the most part, attainable only through political influence. The great advocate relies for his advancement more on the service he can render as a politician than on his forensic achievements. So soon as he has established his reputation at the bar, he looks around with natural ambition for a seat in parliament as the surest course to obtain the highest honours of the law. Though rejoicing in whatever exalts the members of the profession, we regret for some of its best interests that the chief seats on the bench and the woolsack can only be obtained through political influence. With such high prizes in view, it may be no matter of wonder that the barrister, when he has secured his seat, should look more to the measures which may uphold his friends in power, or thwart or overthrow his opponents, than to the great duties involved in the improvement of the laws and their pure administration.

In this state of things, it behoves the great body of the profession, whose interests are inseparable from those of the community in general, to take up the matter equally for the public and themselves, and to aid and promote the return to parliament of persons who will faithfully attend to their high calling.

Amongst the candidates from the bar who come forward for the first time, are, Mr. Sergeant Shee, for Marylebone; Mr. Bethell, for Greenwich; Mr. Cockburn, for Southampton; Mr. Rolt, for Stamford. And we are glad to learn that Mr. Sergeant Talfourd will in all probability again represent Reading.

These gentlemen and others we trust will be disposed to pursue a better course

for the profession than has hitherto prevailed, and in this hope we wish them good speed.

It may be supposed, from their experience in public discussion, that the members of the bar are better adapted for the senate than the other branch of the profession, but it will be readily conceded by all who are acquainted with the practical knowledge and habits of business of eminent solicitors, that they will be most valuable members, not only on many general questions, but especially in considering all the practical details which are so essential to be attended to in working out any important legislative measures.

It is for the want of the extensive information and experience of solicitors that many of the plans for the amendment of the law have altogether failed in accomplishing their objects. The general design may be suggested from a motive of real improvement, and not for the purpose of strengthening power by increased patronage; but whatever may be the ultimate end, it is rarely attained, for want of the aid which the skill and experience of practical lawyers could readily apply.

It is, we are persuaded, for the interest of the public that in the next parliament a due proportion of the second branch of the profession should be returned, and we trust that the solicitors, active as they are for their clients, but slow to move where their own interests are concerned, will be induced on this occasion to unite for the general good. Some who possess wealth, talent, and leisure, will, we hope, allow themselves to be put in nomination. It appears, indeed, that several who are, or have been, in that branch of the profession, are already proposed as new candidates. The city practitioners are coming forward in no small number, viz., Mr. Freshfield, a tried and useful member, well known and respected as the late bank solicitor, and who, besides the commercial, will also represent the Protestant interests of the community. In two of the metropolitan boroughs there are also able candidates in the field, namely, Mr. Pearson, the City Solicitor, for Lambeth, and Mr. Harvey, the Chief Commissioner of Police, for Marylebone. Then Mr. Wire, who has often served the office of Under-Sheriff in the city, is a candidate for Boston. All these gentlemen possess great ability and experience, and would be eminently useful in many of the most important measures which are likely to be brought before the

new parliament. But we hope to see others, both in town and country, ready to serve both the public and their profession. The Metropolitan and Provincial Law Association cannot do better than direct their first efforts towards securing a full and fair representation of the general body of the profession, and through them, of the true and substantial interests of the community.

It may be useful to subjoin a list of the present members well known in the courts of Westminster, and who, in all probability, will find the same or other seats ready for their acceptance.

Bodkin, W. H., *Rochester*.  
Dundas, Sir D., (Q. C.), Solicitor-General, *Sutherlandshire*.  
Godson, R., (Q. C.), *Kidderminster*.  
Granger, T. C., *Durham*, (City).  
Jervis, Sir J., (Q. C.), Attorney-General, *Chester*.  
Kelly, Sir F., (Q. C.), *Cambridge*, (Borough).  
Law, C. E., (Q. C.), *Cambridge*, (University).  
Nicholl, Right Hon. J., (D. C. L.), *Cardiff*.  
Roebuck, J. A., (Q. C.), *Bath*.  
Romilly, John, (Q. C.), *Bridport*.  
Stuart, J., (Q. C.), *Newark-on-Trent*.  
Thesiger, Sir F., (Q. C.), *Abingdon*.  
Walpole, S. H., (Q. C.), *Midhurst*.  
Watson, W. H., (Q. C.), *Kinsale*.  
Wortley, Hon. J. S., (Q. C.), *Buteshire*.

The following members are, or formerly were, practising solicitors of much eminence :—

Benbow, J., *Dudley*.  
Blewitt, R. J., *Monmouth*.  
Grimsditch, T., *Macclesfield*.  
Neeld, J., *Chippenham*.  
O'Brien, C., *Clure*, (County).  
Phillipotts, J., *Gloucester*.

In addition to the preceding list, there are many other members who, though not now in active practice, or who were never more than *honorary* members, yet, being actually called to the Bar, may not unreasonably be expected to feel an interest in the prosperity of the general body. They are as follow :—

Aglionby, W. H., *Cockermouth*.  
Aldham, W., *Leeds*.  
Arkwright, G., *Leominster*.  
Baldwin, C. B., *Tolness*.  
Banks, G., *Dorsetshire*.  
Bernal, R., *Weymouth*.  
Bruges, W. H. L., *Devizes*.  
Buller, C., (Judge-Advocate), *Liskeard*.  
Cardwell, E., *Clitheroe*.  
Christie, W. D., *Weymouth*.  
Cripps, W., *Cirencester*.  
Davies, D. A. S., *Carmarthenshire*.  
D'Eyncourt, Right Hon. C. T., *Lambeth*.  
Dundas, Hon. J. C., *Richmond*.  
Elphinstone, Sir H., D. C. L., *Lewes*.  
Entwisle, W., *Lancashire*, (North).

Escott, B., *Winchester*.  
Estcourt, T. G. B., D. C. L., *Oxford*, (University).  
Ewart, Wm., *Dumfries*.  
Greene, T., *Lancaster*.  
Grey, Right Hon. Sir G., Bart., (Secretary of State for the Home Department), *Devonport*.  
Hardy, J., *Bradford*.  
Hayter, W. G., (Q. C.), *Wells*.  
Hogg, Sir J. W., Bart., *Beverley*.  
Holland, R., *Hastings*.  
Hughes, W. B., *Carnarvon* district.  
Inglis, Sir R. H., Bart., *Oxford*, (University).  
Lefevre, Right Hon. C. S., (Speaker) *North Hampshire*.  
Le Marchant, Sir D. Bart., *Worcester*.  
Ogle, S. C. H., *Northumberland*, South.  
Parker, J., *Sheffield*.  
Round, C. J., *Essex*, (North).  
Strickland, Sir G., Bart., *Preston*.  
Tancred, H. W., (Q. C.), *Banbury*.  
Trelawny, J. S., *Tavistock*.  
Villiers, Hon. C. F., *Wolverhampton*.  
Wood, Right Hon. Sir C., Bart., *Halifax*.  
Yorke, Hon. R. T., *Cambridgeshire*.

[This list does not comprise the Scotch or Irish members who belong to the profession in those parts of the empire.]

## LAW RELATING TO THE BANKRUPTCY OF RAILWAY COMPANIES.

As fiats in bankruptcy have now issued against more than one railway company, and similar proceedings are said to be contemplated in respect to many other companies, it may be convenient to refer, as briefly as the subject will admit, to the leading provisions of the several statutes bearing directly on the question. Great misapprehension prevails as to the effect of bankruptcy, not only as regards the liabilities of directors, committeemen, and shareholders, respectively, but also with reference to the claims of individual creditors; and although the law has not yet been brought so extensively into operation, as to enable any one to predicate confidently as to the result in numerous cases where the statutes are ambiguous or conflicting, on some few points the provisions are so clear as not to afford any room for the existence of reasonable doubts. At present the subject rests altogether upon the statutes, as there are no reported decisions to serve as guides through the labyrinth of enactments in which the law is involved.

The most recent statute in point of time, but that which is first in order as relating to bankrupt railway companies, is

The act 9 & 10 Vict. c. 28, known as Lord Dalhousie's, and which is entitled "An Act to facilitate the Dissolution of certain Railway Companies." The clauses in this act which relate to the bankruptcy of railway companies are not numerous. Under the provisions of that act, a meeting of shareholders may be called for the purpose of determining whether the company shall be dissolved, and by section 23,—“In addition to the question of dissolution, it shall be imperative on the meeting to decide whether such dissolution shall or shall not be taken to be an act of bankruptcy, for the purpose of having the affairs of the company wound up under the provisions of the act “for winding up the affairs of joint-stock companies.” The 9 & 10 Vict. c. 28, s. 27, also enacts, “that it shall be lawful for any three of the committee of a company so dissolved, at any time after the dissolution thereof shall have been so resolved, or for any creditor or creditors of such company to such amount as is now by law requisite to support a fiat, within three months after the dissolution thereof shall have been so resolved, to petition that a fiat in bankruptcy may issue against such company.” The 28th section then proceeds to enact, that upon the production of the Gazette containing the resolution of such meeting that the dissolution of the company shall be an act of bankruptcy, or upon the petition of any three of the committee, or of any creditor under the last clause, a fiat in bankruptcy shall issue against the company, which shall thereupon be deemed to be subject to the provisions of the act for winding up the affairs of joint-stock companies, in all respects as if a fiat in bankruptcy had issued against the company, under the said act, before its dissolution.

It will be perceived that the provisions of the statute 9 & 10 Vict. c. 28, have no reference to the bankruptcy of any company, in respect to which there has not been a resolution in favour of dissolution, at a meeting of the shareholders duly convened under the provisions of the act. The resolution of dissolution is in the nature of a condition precedent, which is requisite to give the enactments relating to bankruptcy any operative effect. The dissolution having been resolved upon by the shareholders, it may lead to, and be followed by, three distinct proceedings:—1st, The meeting which resolved upon dissolution

may also resolve that such dissolution shall, or shall not, be taken to be an act of bankruptcy. 2ndly, Any three of the committee may petition for a fiat at any time after dissolution. And 3rdly, A creditor in the requisite amount may petition for a fiat within three months after dissolution. The act also provides that the resolution to dissolve a company shall not alter or affect the rights of creditors, or other persons not being shareholders; and that after a resolution of dissolution, if judgment be recovered in an action against a member of the committee for a debt of the company, the judgment debtor is entitled to be repaid by contribution from the other members of the committee in equal shares. The operative provisions of Lord Dalhousie's Act, so far as regards the bankruptcy of railway companies, are confined to the enactments above set forth. All the subsequent proceedings are founded upon, and directed by, the act for winding up the affairs of joint-stock companies, to which it is now proposed to advert.

The Joint-Stock Companies' Act, 7 & 8 Vict. c. 111, s. 1, provides, that if any trading company shall commit any act thereby deemed an act of bankruptcy on the part of such company, a fiat in bankruptcy may issue against the same, and be prosecuted in like manner as against other bankrupts, subject to the provisions of that act, with this important proviso, that the bankruptcy of the company is not to be construed to be the bankruptcy of any member in his individual capacity, (sect. 2). What are to be considered acts of bankruptcy on the part of a company are enumerated in sections 4 to 7, inclusive. They are as follow:—1st, A declaration of insolvency, in pursuance of a resolution of directors, under the seal of the company, or signed by the chairman and attested by the solicitor of the company, and filed in the office of the secretary of bankrupts. 2ndly, Company not paying, securing, or compounding for a judgment debt, upon which the plaintiff might sue out execution within 14 days after notice requiring payment. 3rdly, Company disobeying order of a court of equity for payment of money after service of order for payment on a peremptory day fixed. And lastly, a creditor filing an affidavit of debt and issuing a writ of summons, and the company neglecting, within a month, to pay, secure, or compound, to the satisfaction of the creditor, or to appear to the action and satisfy a judge that they intend to defend on the

<sup>b</sup> See the act itself, Leg. Obs., vol. 32.

merits. It is expressly provided, that no action or suit by a creditor is to affect his right to issue or prove under a fiat against the company for an unsatisfied debt, and that the fiat or proof under it is not to affect the action or suit.

There is a general provision that the law and practice in bankruptcy is to extend, so far as applicable, to fiats issued against joint-stock companies, but special provision is made for cases in which it was foreseen that the law and practice would prove inapplicable to the bankruptcy of a company. Thus, provision is made for the service of adjudication of bankruptcy on the company, and the manner of surrendering to the fiat. (Sect. 3.) The court is to order the directors, or so many of them as the commissioner thinks fit, to prepare and file a balance-sheet of accounts, and verify the same; the persons so ordered to prepare the balance-sheet must submit to be examined, &c., and are to have the same freedom from arrest as an ordinary bankrupt. Again, the court, after adjudication, may order any treasurer, solicitor, or agent of the bankrupt company to deliver to the official assignee all monies or securities for monies held on behalf of the bankrupt company, and any person disobeying an order made by the court, may be committed to prison until he conform, or until the court or the Lord Chancellor shall otherwise order; and any member of a company adjudged bankrupt, with a knowledge of, or in contemplation of bankruptcy, destroying the books of the company, or making false entries, is to be deemed guilty of a misdemeanor.

It is also enacted, that the assignees of a company may recover a debt due from any member to the company, and that a member may claim, under a fiat, any debt due to him on a balance of accounts between him and the company; but it is expressly declared that any claim a member may have in respect of his share in the company, is not to be set-off against any demand the assignees of the bankrupt company may have against him.

The Joint-Stock Companies' Act contemplates two distinct courses of proceeding ulterior to, and in some respects, consequent upon, the proceedings in bankruptcy, the one resulting in an application to the Court of Chancery, and the second in a reference to the Board of Trade.

The Court of Bankruptcy is authorised to direct the assignees of a bankrupt company to petition the Court of Chancery for

directions for winding up the affairs of the company, upon which petition an order of reference may be made and accounts taken, and upon the confirmation of the Master's report, a receiver may be appointed; and the Chancellor, with the assistance of the other equity judges, is empowered to make rules and orders for settling and enforcing contribution amongst members.

The reference to the Board of Trade is required in the manner following. Previous to passing the last examination, the court is bound to inquire into the cause of the failure of the company, and after the last examination, to certify the cause of failure to the Board of Trade, and transmit a copy of the balance-sheet to that department. After such certificate has been forwarded, the Board of Trade may recommend her Majesty to revoke any privileges granted to the company, and to determine it, or lay the papers of the company before the Attorney-General, with a view to his directing a prosecution against any director or officer of the company.

Such are the novel, peculiar, and somewhat complicated proceedings it is proposed to put in operation, as regards certain railway companies which appear to be unable to meet their pecuniary engagements. Whether a fiat in bankruptcy can be worked out successfully, that is to say, with advantage to the creditors of the bankrupt company under such a system, remains to be seen. Three fiats only, we believe, have been issued against companies under the existing law. The earliest was in the case of the Forth Marine Assurance Company, where, after a protracted investigation in the Court of Bankruptcy, a petition was presented to the Court of Chancery for winding up the affairs of the company, upon which petition an order of reference was made to the Master, under the 7 & 8 Vict. c. 111, s. 20, and the matter still rests, we understand, in the Master's office. The second fiat issued against the Tring and Reading Railway Company, the act of bankruptcy being founded on a resolution of the shareholders, under Lord Dalhousie's Act, that the dissolution should be taken to be an act of bankruptcy. In that case all the creditors, we understand, have been satisfied, and an application has been, or is about to be made, to supersede the fiat with their consent. The third fiat has been issued in respect of the Birmingham Extension Railway Company, and the proceedings under it are now depending in the Court of Bankruptcy, and also before the Court of Review.

## POINTS IN COMMON LAW.

## NECESSITY OF PLEADING PAYMENT.—INSUFFICIENT COSTS OF PLEADINGS.

THE transfer of jurisdiction from the Superior Courts to the County Courts, in cases where the debt or damages do not exceed 20*l.*, renders it both reasonable and expedient that a more liberal principle should prevail upon the taxation of costs in the Superior Courts. The disproportion between the amount claimed, and the expenses of bringing a defended action for a small sum to trial, was an evil so striking, that the courts were gradually induced to establish a scale of taxation so low as to operate unjustly to the suitor in many cases, whilst it throws an unfair share of responsibility upon the attorney. The allowance, for advising on and preparing pleadings of an ordinary description, is so small as to preclude an attorney in general from consulting a pleader or barrister with regard to the sufficiency of pleadings of a common form. Nice and difficult points frequently arise, however, in respect of such pleadings, which the attorney must either take upon himself to determine, or pay for advice with the certainty that it will not afterwards be allowed him on taxation.

The plea of payment furnishes one of the most common defences in actions for the recovery of debts. We have already seen what difficulty the judges appear to have had in framing an unobjectionable form of plea, when the payment has been made into court after the action has commenced.<sup>c</sup> Where the defence is founded on a payment before action, the new pleading rules, H. T., 4 W. 4, require that such defence should be specially pleaded. The form of the plea of payment does not, perhaps, involve any peculiar difficulty; but the courts are far from being agreed as to what constitutes a payment in every case, so as to require a special plea of payment to let in evidence of the facts.

In *Bussey v. Barnett*,<sup>d</sup> which was an action for goods sold and delivered, there was evidence to prove that within ten minutes after the delivery of the goods at the defendant's house, he paid for them in full, with the exception of 4*s.* 6*d.*, which was the subject of a plea of tender. It was objected that the defence was inadmissible as there was no plea of payment, and the

evidence could not be received under the plea of *nunquam indebitatus*. The Court of Exchequer, however, thought the defence was admissible without a plea of payment. "The moment goods are delivered on credit," (said the court in that case,) "a contract arises whereby the defendant becomes indebted; but where there is a contract for the sale and delivery of goods, for ready money, and ready money is paid there is no debt."

The authority of this case has been very much shaken, however, by a decision of the Court of Queen's Bench, in a late case of *Littlechild v. Banks, Executrix*.<sup>e</sup> In this case the plaintiff's claim was for hay sold and delivered by him to the testator. The hay was bound on the plaintiff's premises, and removed by the testator's labourers. The defence set up was, that the hay had been paid for by the testator when removed, and this defence was objected to as inadmissible, because there was no plea of payment. When the point came under discussion, the case of *Bussey v. Barnett* was relied upon by the defendant; but *Patteson, J.*, is reported to have said,—“According to *Bussey v. Barnett*, if there was a ready money payment, there never was a debt. I cannot agree in that law.” And *Coleridge, J.*, illustrated the point in this way:—“If,” said he, “there were an express agreement to buy and sell on the principle of immediate payment, and the purchaser took away the goods without paying, would not a debt be created?” The other judges appear to have concurred in these views, and decided accordingly.

The practical result to be drawn from the case last mentioned is, that where the defence involves the fact of payment, under whatever circumstances the payment took place, it is expedient to put a plea of payment on the record. What we venture humbly to protest against is, that questions of this nature, involving subtle distinctions, and the correct determination of which supposes a profound knowledge of the science of pleading, and an intimate acquaintance with judicial decisions, should be thrown upon the attorney, whilst the rate of allowance for business in which questions of this nature constantly arise is so small, as to preclude him from consulting those who have made this branch of the law their peculiar study and occupation.

7 Queen's Bench R. 739.

<sup>c</sup> See vol. 32, p. 525. <sup>d</sup> 9 M. & W. 312.

## NEW BILLS IN PARLIAMENT.

### INVESTMENT OF TRUST MONIES.

This is a bill to facilitate the Investment of Trust Monies in the Improvement of Land.

The preamble states, that it is expedient that further facilities should be given for the permanent improvement of land; that there may be now or hereafter in the hands or standing to the account of the trustees of a settlement, will or codicil, monies produced by the sale or received for equality of exchange of settled landed estates under a power of sale or exchange, or under trusts for sale in such settlement, will or codicil contained, or stocks or securities purchased with such monies, and which monies are liable to be laid out in the purchase of other lands, to be settled in the same or the like uses, or upon and for the same or the like trusts and purposes as the estates from the sale or exchange of which such monies were produced, and there may be now or hereafter in the hands or standing to the account of the trustees of a settlement, will or codicil, monies the produce of settled estates sold compulsorily or otherwise, for the purposes of a railway or other public work or undertaking, or other monies, stocks or securities liable to be laid out or employed in the purchase of lands; and it may happen that the said monies, stock or securities respectively, may be advantageously laid out or employed in the permanent improvement of lands remaining unsold or in settlement; that there may be now or hereafter in the hands or standing to the account of trustees or guardians for infants or others under legal disability, or in the hands or standing to the account of the committees of persons of unsound mind, monies, stocks or securities, which may be advantageously laid out or employed in the permanent improvement of the lands of such infants, persons of unsound mind, or others under legal disability; it is therefore proposed to enact,

1. Trustees of settled estates may apply to Court of Chancery by petition.
2. Court may refer such petition to a Master, and obtain his report.
3. Court may confirm report, and make an order thereon.
4. Master to inquire and report on the due expenditure on improvements as ordered.
5. Advances to be charged on lands improved.
6. Tenants for life to keep down charges and maintain works.
7. Interpretation of terms.
8. Act not to extend to Scotland or Ireland.

## REPORT ON LEGAL EDUCATION.

### EFFECTS OF THE PRESENT SYSTEM.

UNDER the second head of their report the committee proceed to state the effect of the present system of legal education.

Amongst the witnesses examined, and who may be considered as fair representatives of the several classes of the profession interested in the subject of legal education, there is but one opinion of the inefficiency of the present system, the injurious consequences which have resulted from it, and the urgent necessity of immediate alteration, both in reference to extent and improvement. The committee quote largely from the opinions of the witnesses who have been examined. We shall venture to condense their statements, and accompany them with a few observations.

Whilst it is shown that neither at the colleges nor universities, nor in the Inns of Court, is any satisfactory system of legal education pursued, it must not be forgotten that the deficiencies of those establishments are in a considerable degree supplied by private study and individual instruction. The men who enter the profession for the emoluments, the rank, and honour which are held out as the result of a successful career, usually pursue their studies under the guidance of able pleaders and barristers, and are exercised as pupils in all kinds of practice. Doubtless, the student ought to be helped in his career by the best lectures, and stimulated by the prospect of an efficient examination. The foundation should be laid at the college, and perfected in the Inns of Court.

As the bar in its present state has produced men of the highest eminence in all departments, the committee have duly considered the preliminary question—whether better results than now prevail can be expected from a change of system?

“This conclusion has, however, been repudiated by almost every witness, and in an especial manner by Lord Campbell, who states that ‘he does not attach any weight to that argument at all; for he thinks that all the great men who have acquired eminence in the profession of the law in England would have been equally great if they had had a regular legal education, and many of them would have performed their duties in a still more distinguished and satisfactory manner; while many of those who have acquired high office in England by their abilities and their interest, being deficient in legal acquirements, have not, he thinks, performed the duties assigned to them at all in a manner so well as they would have done if they had been more particularly and more systematically educated.’ He thinks that no distinction whatever should be made in that particular between the bar and the professions of the church and of medicine; that the case is quite analogous to that of the medical profession, where is required not only examination,



—but proof of having attended a certain course of study; in a word, 'a combination of examination and of a regular course of study at some established and recognised place of education.' Mr. Starkie thinks 'an educational test would not injure any party, but be of great benefit to the younger student and to the public.' Dr. Phillimore is of the same opinion. Mr. Creasy supports similar views in detail, and with much force of evidence and argument. Far from recognising the assertion just noticed, he sees reason, on moral as well as intellectual grounds, for insisting on an improved system. 'You must not test,' he observes, 'the condition of the profession with reference to itself and society generally by the few brilliant stars that it has produced; but you must look to the general state of its members in the aggregate. I think the course of study which I have been indicating would tend to raise the character of the bar, not only with reference to their legal qualifications, but also to that general high tone, which I think so desirable, for the sake of all the community, that it should possess.' Mr. Bethell shares the same conviction, and urges it with great force throughout the greater part of his evidence. Mr. Lyle, Professors Lawson and Longfield, Mr. Barry, Sir G. Stephen, earnestly concur. But the consideration of the question itself will more effectually combat this plausible objection than any authority, however eminent. The force of the argument depends upon two postulates, that the condition, moral and intellectual, of the different branches of the profession, and of those classes who have analogous duties to perform, is in as high and wholesome a state in reference to those bodies, and to the public at large, as well could be desired on one hand, and on the other, that even if such were not the case, there is nothing in an improved and extended system of legal education which could contribute to raise or better it. Your committee have examined the grounds on which these assertions are supposed to rest, and have come on both to the opposite conclusion.

"The first assertion sets out on two fallacies: 1. That the high eminence to which some distinguished men have risen is conclusive against the possibility, under still more favourable circumstances, of their rising to an eminence much higher; and 2. That the superiority of the few is conclusive as to the abilities, acquirements, and character of the many. Now, as the public have to do not only with the few, but also with the many of the profession, it is of the same importance to the public as in the two other learned professions, that they should be enabled to assure themselves, with as near an approach to truth as may be, of how far the many as well as the few are qualified to perform satisfactorily their respective duties.

"In each of these respects the evidence before your committee gives different results from what are usually assumed. The conclusion to which it leads is, that eminent men might have been far more eminent, their excellences enhanced, their errors and deficiencies abated, under a better system; but what is of higher

and wider influence, that the great body of the profession might have been rescued from many of those crying evils, injurious to themselves, injurious to the public, under which, on the avowal of the most enlightened of its members, they at present labour.

"In the high places of the profession, on the bench itself, these evils are discoverable. The want of an early well-directed and well-digested philosophical system of study may for a long period, in the more technical pursuits of the profession, be felt but partially. The young man, from his knowledge of practice or from his connexion with attorneys, may be pushed forwards, and elevated rapidly in his profession. But when the period of life comes at which he is to become a senior counsel, he then falls from the eminence he has acquired by this nice knowledge of technicalities, unless at that critical period he be saved from falling by securing a seat upon the bench. This evil is still further developed by Mr. Bethell, to whose opinion of its effects, not merely on the officer, but on the office, and on the very principles and practice of the science, we refer. Lord Brougham has very distinctly followed out, through its whole progress, the consequences of the present mode of legal education upon the judicial portion of the profession. He sees in the want of systematic study and knowledge in the lawyer the natural tendency there is to read up for the immediate occasion only, and the consequent ignorance of other questions when called on. 'On coming to discuss the same point of law,' says the noble lord, 'perhaps, in another case which they had not read up for in the same way, they were totally at sea; they had forgotten the law which they had got up on the former occasion. Now, to a certain degree, the same imperfection will be found in all lawyers who have not studied the learning of their profession systematically, and, (if I may so speak,) scientifically, but have gathered it by degrees, picking it up as they have had occasion for it in the course of their business: they, to a certain degree, are less accomplished lawyers, and have a less accurate knowledge of the principles than if they had learned them more systematically. And this will no doubt apply to the judgments of the judges on the bench as well as to the arguments of counsel at the bar.' Lord Campbell, reverting to his own large experience, corroborates this opinion. 'One inconvenience that I myself have known to arise from it,' he observes, 'is this, that suppose a young man is called to the bar with very little legal proficiency, or even general education (because to be entered of the inns of court they do not require even an examination in classical learning), he is pushed on by his friends: he has great natural vigour, and he pushes himself on, and has, perhaps, great merit. He is made a judge, but he is quite incompetent for the office. I have known instances of that, to the great detriment of the public.' But if this be observable at home, it is far more conspicuous in our foreign possessions. Lord Brougham corroborates this in detail: 'With respect to the judges, the de-

iciency of the means of legal education,' he states, 'is peculiarly to be remarked in the case of colonial judges; less so, perhaps, in the case of Indian judges. — A very young barrister, or a barrister who has failed to obtain practice at the bar, is thus sent out either before he has become fit to practise at the bar, much more to decide as a judge, or after his unfitness has been ascertained by his failure.'"

The report then proceeds to detail the unhappy consequences of these defects in administering the law in the colonies, and this part of the subject is thus concluded :

"The consequence has been, that in this country we have, generally speaking, but few examples of that important class of thinkers and writers who, in other countries, standing on the summits of the profession, and disengaged from the turmoil and labour of its daily technical duties, have, with disposition and capacity, leisure also, and opportunity to keep the profession up to the intellectual height to which it should be its proudest boast to aspire. Abroad publicists and professors form a class apart, occupying the most honourable posts in their profession, and in the service of the state. Here such a class is comparatively unknown, and individual examples are rare; and yet few countries have, from the principles and forms of its government and constitution, greater need of such a body than ours. Were such a body in existence, it is scarcely possible that our legislation would have presented the many offences against the first principles of logical and legal arrangement, nor been exposed to the numerous incongruities of manner and matter with which so many of our acts of parliament abound. Nor is its absence the only deficiency which the public has to regret. From the concentration of all intellectual effort within the narrow limits of our ordinary courts, there are few who devote themselves to studies which, though possibly of less profit to the individual, are of serious import to the public. International law, commercial law, are only touched on incidentally, in the course of other studies, or just as much of the leading forms of procedure (with little or no reference to principle) is caught up in the progress of a controverted question as will be sufficient to bear a man of average courage and capacity through; and whilst in other countries the passage from one department to another of the profession is comparatively easy, from the circumstance of the lawyer having mastered the great scientific principles on which all equally rest, amongst us, where such application to first principles, that is, to law, as a science, is comparatively unknown, the transition from one to another is a matter of empiricism, and the success with which it is accomplished almost exclusively ascribable to mere dexterity or chance."

Such are the alleged effects of the present system on the bar. With regard to

solicitors, the committee, quoting from the evidence of Sir George Stephen, say—

"It is hardly possible to mention any topic, or any subject upon which, sooner or later, a solicitor in large practice may not find himself deeply engaged. It is quite possible to define, within a narrow compass, the nature of a solicitor's business; it extends to anything, it extends to everything; the fact is, that we are, as professional men, entrusted to a very great extent with the confidence of gentlemen; we are entrusted to a very great extent with the most sacred matters connected with the families of gentlemen. It often happens that the protection of their honour and their character, and of course, of their property, is left to our zeal and our integrity; and where we are brought into this confidential and habitual intercourse with men of every class in society, the highest as well as the lowest, I think that it is most important that the profession should be so educated as to be qualified for carrying on that intercourse as gentlemen themselves; but I apprehend that that qualification cannot be attained except by educating them as gentlemen, with much greater attention to their general endowments and information than is at present the case.' The variety and extent of information, as well as perfect propriety of conduct and character necessary for such duties are obvious, but both require very considerable additions when the solicitor comes in contact, in a country like this, with the public generally. The diversity of subjects to which any respectable solicitor must in the course even of a single day attend to, many, too, demanding much more than a superficial knowledge, needs not to be insisted on. The example furnished by Sir George Stephen, from his own experience, may, without exaggeration, be considered as common to most of the more eminent members, at least, of his profession. It can scarcely be doubted, under present circumstances, and from the amount and quality of the present provision for legal education, that these requisites are in very few cases attainable. Very few even of the more ordinary branches of knowledge indispensable for a fair discharge of common duties, as detailed by Sir George Stephen, are to be met with; and under the present system are not easily to be acquired, and ought hardly to be expected."

In some parts of the report due credit is given to the Incorporated Law Society for the improvement it has effected, and the example it has set of a return to the ancient ways of legal instruction; but some of the witnesses speak of the examination as of little value, affording no satisfactory test of ability and capable of being far too easily passed. Now the fact is, we believe, that the judges do not wish that the examination should be conducted otherwise than it is. They not only know what is the scope of the questions at the examina-

tion, but one of their own principal officers, the Master, always presides, and is thus enabled to increase or moderate any strictness or severity in conducting the examination. After, however, ten years' trial, it may, perhaps, be expedient,—if not to extend (as some have suggested) the number and difficulty of the questions,—yet to require a larger proportion than at present to be correctly answered. The proposed alteration, however, should be well considered, and if adopted, ample notice should be given of the time when it will come into operation. The number and nature of the questions seem to be confided to the examiners, but any material change in the present practice must be done with the sanction of the judges.

## ATTORNEYS TO BE ADMITTED,

*Michaelmas Term, 1847.*

(Concluded from page 224, *ante*.)

### *Queen's Bench.*

#### *Clerks' Names and Residences.*

#### *To whom Articled, Assigned, &c.*

Markby, Henry, 53, Acton Street, Gray's Inn Road; Halesworth . . . . .	John Crabtree, Halesworth
Mellor, John William, 21, Queen's Row, Pentonville; and Swinton Street . . . . .	W. G. Taylor, John Street, Bedford Row
Milner, Dennis, 2, Charles Street, Gibson Square; and Moore . . . . .	J. T. Marsh, Warrington
Marlow, Thomas, 6, Frederick Place; and Walsall . . . . .	John Foster, Walsall
Miller, William, 23, Wilton Place, Belgrave Square; and Beeles . . . . .	R. Bolum, and S. W. Rix, Beeles
Meggison, Robert Graham, Newcastle-upon-Tyne; and York . . . . .	J. Russell, York
Mickleth, Thomas, 39, Holford Square; Maidenhead; 8, Lloyd Square . . . . .	John Weedon, Reading
Morris, Edward, 6, Southampton Street, Mornington Crescent; Hereford; Wellington Street, Strand; Halywell House; Haverstock Hill . . . . .	Henry Darvill, New Windsor
Myers, John, Manchester . . . . .	John Cleave, Hereford
Nicholl, John James, 16, Ely Place . . . . .	Already admitted in the Court of C. P. at Lancaster
Neale, William John, 24, Liverpool Street, Gray's Inn Road; East Retford; and East Street, Queen's Square . . . . .	Robert Southee, 16, Ely Place
Norman, George Lewis, 5, Wigmore Street; Yeovil . . . . .	John Mee, East Retford
Owen, Owen, Pwllheli . . . . .	Messrs. Newman and Lyon, Yeovil
Ottaway, Philip Watson, 35, Charter House Square; Staplehurst; East Place, Kennington Road; and Burton Street . . . . .	Thomas Ellis, Pwllheli
Oxley, John, jun., 12, River Street, Myddleton Square; Rotherham; Gerrard Street, Islington . . . . .	G. J. Ottaway, Staplehurst
Pollard, George Octavius, 35, Dorset Street, Portman Square . . . . .	John Oxley, Rotherham
Pemberthy, Henry, Devonport; 12, Harrington Street, North Hampstead Road . . . . .	Powell, Broderip and Wilde, 9, New Square
Price, Richard Hope, jun., 18, St. Thomas Street, East; Tettenhall . . . . .	George Pridham, Plymouth
Prescott, George William, Stourbridge . . . . .	J. B. Deaken, and Wm. Dent, Wolverhampton
Pretty, Henry Granger, 28, Albert Street, Mornington Road; and Tettenhall . . . . .	Rowland Price, Stourbridge
Parr, William, 17, Portugal Street, Lincoln's Inn . . . . .	A. H. Browne, Wolverhampton
Pickop, William, 39, Argyle Street, New Road; and Blackburn . . . . .	R. W. Parr, Poole
	Henry Hargreaves, Blackburn
	C. R. Craddock, Gray's Inn

- Pratt, John Forster, 7, Arthur Street, Gray's Inn Road; and Berwick-upon-Tweed . Robert Weddell, Berwick-upon-Tweed
- Poore, Philip Henry, 29, Alfred Street, Bedford Square; and Andover . William Everett, Andover
- Picard, Alfred Christopher, 41, Newington Green . W. Phelps, Red Lion Square
- Reynolds, William Collett, Great Yarmouth; 12, New Milman Street . Charles John Palmer, Great Yarmouth
- Rouse, James, 4, South Square, Gray's Inn . Charles Ranken, South Square
- Robinson, Thomas, 4, Albany Road, Barnsbury Park . Thomas Mitton, Southampton Buildings
- Rogers, Walker Goddard, 12, Bayham Street South, Camden Town; and Southampton . Charles Long, Southampton
- Roche, Charles Bennett, 38, Gloucester Street, Queen's Square; and Daventry . Thomas C. Roche, Daventry
- Raven, John, 43, Manchester Street, Gray's Inn Road; and Hawkshead . John Slater, Hawkshead
- Rowlands, Edward Richard, Worcester . Thomas Barneby, Worcester
- Robinson, William, 17, Parkenham Street, Charter House Square; and Richmond, Yorkshire . Henry Allison, Richmond, Yorkshire
- Symms, John Lockhart, 20, Hermes Street, Pentonville; 9, Cottage Grove, Walworth . Charles Davison Scott, Furnival's Inn
- Spicer, Ralph North, 17, Great Ormond Street . Ralph Spicer, Great Marlow
- Smith, William Ackers, Lower Road, Deptford . G. Waller, jun., 24, Finsbury Circus
- Stoker, John George, Newcastle-upon-Tyne; Albany Street . George Hildyard, Furnival's Inn
- Sladen, Douglas Brooke, 22, Doughty Street, Mecklenburgh Square; and Cranbrook . John Clayton, Newcastle-upon-Tyne
- Smith, Albert, 14, Royal Hill, Greenwich; Stoke Damerel; Upper Stamford Street; Blackheath; and St. Thomas Street, East . William T. Neve, Cranbrook
- Symes, Charles Pitman, Coombe near Sherborne, Dorsetshire; Liverpool . I. France, 24, Bedford Row
- Stockwell, Augustine Ambrose, 29, Manchester Terrace, Islington; and Solley Terrace, Pentonville . John Smith, Devonport
- Stretton, George, 2, Great Russell Street, Covent Garden . Messrs. Statham and Horner, Liverpool
- Smallwood, John, 37, Lower Park Street, Islington . G. Selby, Lincoln's Inn Fields
- Shekell, Thomas Stevens, Pebworth; 11, Gower Place; Pershore . E. Mackeson, Lincoln's Inn Fields
- Scoones, Francis, Tonbridge; 14, Featherstone Buildings . George Freeth, Nottingham
- Seymour, Hugh Callan, Leigh Street, Burton Crescent; Bath . George Rawson, Nottingham
- Smith, William Frederick, Hemel Hempstead . William Spurrier, Birmingham
- Score, Charles Call, 43, Carey Street . Edwin Ball, Pershore
- Stansfield, John Fish, 3, Mornington Place, Hampstead Road; Patmos, Todmorden; and Accrington . Messrs. Scoones and Alleyne, Tonbridge
- Selby, John Caleb, 32, Tavistock Place, and Sheerness . John Physic, Bath
- Sansom, Samuel, 66, Judd Street, New Road; Powis Place; Great Ormond Street . William Smith, Hemel Hempstead
- Trollope, William Mann, 37, Chester Square, Pimlico . Charles Score, Sherborne
- Thornton, George, Bradford . Thomas Turner, Bath
- Tippetts, J. Berriman, jun., 6, Pancras Lane . James Stansfield, Ewood, near Todmorden
- Thomas, William Joseph, 4, Canonbury Park, Islington; Hay; Brecon; and Hereford . Knowles King, Maidstone
- Turner, John Barnabas, 31, Haymarket; Kensington; Garden Terrace, Hyde Park . Robert Edmeades, Sheerness
- Underhill, Henry, 9, Montague Place; River Terrace, Islington; Wolverhampton . James Burton, Powis Place
- . Messrs. Rogers, Manchester Buildings
- . William Wells, Bradford
- . J. P. Tippetts, Pancras Lane
- . Alfred Rendall, Hay
- . Thomas Moseley, 13, Bedford Street, Covent Garden
- . Edward Bennett, Wolverhampton

Upward, Walter, 12, Hamilton Place, New Road	Samuel White Sweet, Basinghall Street
Worthington, Thomas, 60, Carey Street; 6, Myddleton Square	G. F. P. Sutton, Basinghall Street
Walker, William, 15, Ranelagh Grove, Pimlico	Edward Trollope, 60, Carey Street
	William Bartholomew, 3, Gray's Inn Place
	Richard Henry Witty, Essex Street
	Edward Strick, 159, Fenchurch Street
Wallingford, Edward Alfred, St. Ives	George Game Day, St. Ives
Waring, Thomas, 123, Chancery Lane	John Francis Bellwood Fay, Ruthin
	Edward H. Edwards, 11, New Palace Yard
	Thomas Kirk, 10, Symond's Inn
Watts, G. Augustus Everitt, St. Leonard, Devonshire	Charles Henry Turner, Exeter
Wilson, Robert jun., 103, Lower Thames St.; and Berwick-upon-Tweed	J. C. Weddell, Berwick-upon-Tweed
Winfred, William, 6, Elysium Row, Fulham; and Hart Street, Bloomsbury	Charles Addis, Great Queen St., Westminster
White, John, jun., 9, Grosvenor Place, Cambridgewell Road	J. White, sen., Barge Yard Chamber, Bucklersbury
Woolcott, John, 20, Frederick Street, Gray's Inn; Wimborne Minster; Drummond Street Road; and Calthorpe Place	Henry Rowden, Wimborne Minster
Whiteman, Alfred, Eastbourne	R. Terrewest, Eastbourne
Withey, Henry, 24, Trinity Square; and Colchester	Samuel Withey, Colchester
Wilson, Richard, Leeds	John Shackleton, Leeds
Wallis, George Oakes, 13, King Street, Portman Square; Derby	William Eaton Mousley, Derby
West, Frederick, 20, John Street, Pentonville; Edwin Place, Peckham; Highgate	Thomas Lott, Bow Lane, Cheapside.

*Notice of Admission in Michaelmas**Term, 1847, pursuant to Judges' Orders.*

Alcock, Joseph Locker, 89, Hatton Garden	Thomas Bisgood, Carey Street
	William Carr Foster, 28, John Street
Abrahams, Michael, 19 A, Cambridge Terrace, Hyde Park	Samuel Abrahams, 4, Lincoln's Inn Fields
Byam, Joseph Davies, Bristol	Joseph Baker Grindon, Bristol
Bromet, John Addinell, 15, Lower Calthorpe Street; and Tadcaster	Richard Baillie, Tadcaster
Clay, Charles, jun., Knighton	Richard Green and Thomas Peters, Knighton
Falconar, J. B. jun., Newcastle-upon-Tyne	John Fenwick, Newcastle-upon-Tyne
Headley, Tanfield George, 35, Gloucester Place, Portman Square	Robert William Peake, 11, New Palace Yard
Johnson, James Henry, 9, Ampton Street, Gray's Inn Road	William Ghrimes Kell, 43, Bedford Row
Jones, John Parry, formerly called John Jones, Ruthin, Denbigh, and 32, Alfred Street, Bedford Square	James Vaughan Horne, Denbigh
Indermaur, John, 21, Friedenstein Terrace, Mornington Road; Quickset Row, St. Pancras	James Proctor, New Square, Lincoln's Inn
King, Samuel Leyson Wickens, 22, Wilmington Square	Edmund Sharp, 2, Devonshire Terrace
Lough, John jun., 12, Featherstone Buildings; and Langport Eastown	Samuel King, Wilmington Square; Furnival's Inn
Roy, William Gascoyne, 37, Great George Street, Westminster	John Samuel Warren, Langport Eastown
Shaw, Henry, Billericay	John S. Gregory, Bedford Row
Toynbee, Robert, New Sleaford; 13, Warwick Court; 26, Albert Street, Regent's Park	Richard Roy, 32, Lothbury
Yates, Alfred, 7, Liverpool Street, Broad St.	George Shaw, Billericay
	William Foster, New Sleaford
	Saul Yates, Bury Street, St. Mary Axe.
	Edward I. Sydney, Liverpool Street.

*The following Notice was put under the Door on the Evening of the 18th or Morning of the 19th instant.*

Taylor, John, jun., 9, Pakenham Street, Gray's Inn Road; Green Terrace, Clerkenwell; Isle of Ely	Thomas Ayliff, Holbeach.
--	--------------------------

**ANALYTICAL DIGEST OF CASES,  
REPORTED IN ALL THE COURTS.**

**Court of Revisio.**

**BANKRUPTCY.**

**ACT OF BANKRUPTCY.**

See *Lunatic; Reputed Ownership*, 2.

**AFFIDAVIT OF DEBT.**

*Taken off file.*—Affidavit of debt filed under 1 & 2 Vict. c. 110, s. 8, ordered to be taken off the file with the creditor's assent. *Anon.*, 1 De Gex, 334.

And see *Removal of Fiat*.

**AMENDING FIAT.**

*Death of one bankrupt before adjudication.*—Where one of the bankrupts died before the adjudication under a joint fiat, the fiat was ordered to be amended by omitting his name. *Ex parte Hall*, 1 De Gex, 332.

**ANNUITY.**

*Set-off.*—*Valuation.*—Assignees who had brought an action against an annuity creditor of the bankrupt on a cross-demand were, on the petition of the creditor, submitting to the jurisdiction of the court, restrained from proceeding in the action. *Ex parte Law*, 1 De Gex, 378.

*Semble*, that the commissioner has no jurisdiction to value the annuity for the purpose of its value being set off in an action. *Ex parte Law*, 1 De Gex, 378.

**ANNULLING FIAT.**

1. *Costs.*—A fiat was issued at the bankrupt's instance, and on a petition by a creditor, assented to by the bankrupt and the assignees, the same was annulled, with costs to be paid out of the estate, the petitioner undertaking to issue a new fiat immediately. *Ex parte Lowtell, in re Dutchman*, 33 L. O. 527.

2. The debtor, on being served with the summons, called on the creditor's solicitor and saw his clerk, at whose instance the debtor signed a memorandum promising to pay at a certain time, or that if he did not, the creditor might proceed on the summons. The debtor was attended by no solicitor on his behalf, and was not aware of the irregularity in the proceedings. *Held*, that neither the signature of the memorandum nor his failure to attend the summons prevented his impeaching the regularity of the proceedings, but that the fiat ought to be annulled with costs. *Ex parte Greenstock*, 1 De Gex, 230.

3. *Surrender.*—Petition of bankrupt to annul the fiat heard, although he had not surrendered, the time for his surrender having expired between the presentation of the petition and the hearing. *Ex parte Hodson*, 1 De Gex, 374.

And see *Office Fees*, 2.

**ASSIGNEE'S ACCOUNTS.**

1. *Official assignee's duty in calling for old accounts.*—Trustees under an assignment for

benefit of creditors employ an agent to proceed to America to recover part of the assigned property. Afterwards the debtors become bankrupt, and three of the trustees are appointed assignees. *Held*, that, under the circumstances of the case, the assignees ought to be allowed in their accounts the expense of employing the agent.

For the purpose of bringing expenses within the description of just allowances, it is not necessary to show that they have actually benefited the estate, if there was a fair probability of their so doing. Where there had been no audit of the assignee's accounts, and large sums had been received by them, it was held, that the official assignee acted properly in calling for an audit, although 25 years had elapsed since any step had been taken, and no creditor made any complaint; but the court being of opinion that the official assignee might with little difficulty and at a small expense have satisfied himself that the circumstances did not render it incumbent on him to continue to prosecute a claim against the creditor's assignee, he was not held entitled to his full costs as against the latter, there being no estate. *Ex parte Shaw*, 1 De Gex, 242.

Case cited in the judgment: *Ex parte Christy*, 3 M. & A. 90.

2. *Assignee's accounts.*—Where the solicitor to the fiat received and paid all monies on account of the estate, and at the audit the accounts were verified by his affidavit as to their accuracy, and the affidavit of the assignees that they had neither received nor paid anything, except what had been so received and paid by the solicitor; but there was nothing to show that either of the assignees had, either as to information or belief, verified the accuracy of the accounts. *Held*, that the accounts ought to be opened and retaken, although three years had passed since the audit. *Ex parte Rees and another*, 1 De Gex, 205.

Case cited in the judgment: *Ex parte Woolston*, 3 M. D. & D. 702.

**BANKRUPT'S EXPENSES.**

*Changing venue of fiat.*—Bankrupt allowed his expenses arising from changing the venue of the fiat after adjudication. *Ex parte Cheeseborough and another*, 1 De Gex, 333.

**BANKRUPT'S FIAT.**

*After he has ceased trading.*—*Creditor's petition to annul.*—*Semble*, a man who has ceased to trade cannot sue out a fiat against himself, unless he owes a debt contracted during the trading which would support a creditor's fiat. A creditor who has successfully opposed an application by an insolvent for relief under 5 & 6 Vict. c. 116, on the ground that he is a trader, cannot afterwards petition to annul a fiat sued out by the insolvent himself for want of trading. *Ex parte Mitchell*, 1 De Gex, 267.

See *Priority of Costs*.

**BUYING IN.**

*Without order.*—When an assignee bought

in without an order, he was ordered to make good the loss occasioned by a re-sale. *Ex parte Gover*, 1 De Gex, 349.

#### CHANGING VENUE.

See *Bankrupt's expenses*.

#### COMMITMENT.

1. *Contempt. — Irregular order.* — Although an order of commitment should contain an express adjudication that a contempt has been committed, the want of an express adjudication is not sufficient ground for discharging the order. *Ex parte Van Sandau*; *Ex parte Turner and another*, 1 De Gex, 303.

Cases cited in the judgment: In re the St. James' Evening Post, 2 Atk. 469; *Morgan v. Jones*, 1745, Lord Hardw.; *Totherby v. Preston*, 26 Mch. 1748; *Priestly v. Lamb*, 5 Ves. 420; In re Quick, 20 Dec. 1806; *Lechmers Charlton's case*.

2. An order of commitment may direct the party committed to pay the costs of the party complaining, but not his costs, charges, and expenses. *Ex parte Van Sandau*; *Ex parte Turner and another*, 1 De Gex, 303.

Cases cited in the judgment: *Bullen v. Ovey*, 16 Ves. 141; *Leonard v. Attwell*, 17 Ves. 385.

3. *Irregular Warrant. — Damages.* — When the party complaining obtained a warrant for the apprehension of the party ordered to be committed, and delivered it to the officer by whom it was executed, and afterwards the party committed was discharged on his own application, and various orders were made founded on the commitment, and it afterwards appeared that the warrant was by an oversight not sealed: *Held*, that the commitment was invalid—that the consequent order ought to be discharged, and that the party committed was entitled to recover damages from the party obtaining the process. *Ex parte Van Sandau*; *Ex parte Turner and another*, 1 De Gex, 303.

#### COW-KEEPER.

See *Trading*.

#### COSTS.

*Set-off. — Lien. — Quære*, whether it can be made part of the order that the creditor should set off his debt against the costs; and whether any consideration of the lien of the debtor's solicitor would prevent such an order being made. *Ex parte Greenstock*, 1 De Gex, 230.

And see *Annulling Fiat*, 1; *Commitment*, 2; *Insolvent*; *Official Assignee*, 2; *Proof*, 2; *Sur-render*, 2.

#### CREDITOR.

*Refunding amount received on security.* — Where all parties acted under an impression that a security was for the whole amount of a debt, and 21 years had elapsed since the security was given, but no evidence could be produced of any contract except one for security to a limited amount, which was exceeded by the amount received by the creditor upon his

security: *Held*, that the creditor ought not to be called upon to refund. *Ex parte Follett*, 1 De Gex, 212.

#### COVENANT AS TO BUILDING.

In a contract for a purchase of land, there is a stipulation that the conveyance shall be made subject to certain conditions and restrictions as to building upon the land, and to a covenant for their observance, and proper provisions for securing the due performance thereof: *Held*, that this contract entitled the vendor to have a power of entry inserted in the conveyance in case of a breach of the covenant, but not to have a term of years, or a rent-charge limited to a trustee. Form of the power of entry which the vendor is entitled to have: *Quære*, whether such covenants as the above run with the land. *Ex parte Ralph and another*; *Ex parte Hastings and others*, 1 De Gex, 219.

#### DEATH OF BANKRUPT.

See *Amending Fiat*.

#### DIVIDEND.

1. *Stay of, to admit proof.* — Dividend stayed to give opportunity of proving to creditors who had delayed proving for 11 years, no dividend having been declared for upwards of 11 years after the fiat issued. *Ex parte Sturton and others*, 1 De Gex, 341.

2. *General right to come in when dividend stayed.* — Opening dividend at instance of one creditor lets in others to prove. *Ex parte Bowner*, 1 De Gex, 343.

#### EVIDENCE.

*Reading examination.* — Examinations before the commissioner cannot be read as evidence on a petition. *Ex parte Rees and another*, 1 De Gex, 105.

#### EXAMINATION.

Where no creditor's assignee has been chosen, the bankrupt cannot be allowed to pass his last examination as of course. In re *Wells*, 33 L. O. 503.

And see *Evidence*.

#### INSOLVENT.

*Where no assets.* — *Semble*, That an insolvent petitioner, or a bankrupt on his own petition, having no property to be distributed amongst creditors, is not within the scope and meaning of the statute 7 & 8 Vict. c. 96. — In re *Gilham*; In re *Alex. Braughan*, 33 L. O. 378.

#### JOINT ESTATE.

See *Proof*, 1.

#### JOINT-STOCK COMPANY.

See *Order in Chancery*.

#### JURISDICTION.

*Quære*, Whether the commissioner has jurisdiction to open accounts audited and passed by commissioners under the old jurisdiction. *Ex parte Rees and another*, 1 De Gex, 105.

#### LIEN.

See *Reputed Ownership*, 3.



## LUNATIC.

*Act of bankruptcy.*—*Semble*, That a lunatic cannot commit an act of bankruptcy by omitting to pay or give security. *Ex parte Stamp; Ex parte Jones*, 1 De Gex, 345.

## MISDESCRIPTION OF BANKRUPT'S RESIDENCE.

A bankrupt's usual place of business for two years before the bankruptcy had been at Wootton Bassett, but he had taken for his family a house at Durdham Down, near Bristol, where he had resided for some months previous to his bankruptcy and contracted debts. A Bristol fiat, describing him as of Durdham Down, and naming him Clarke, instead of Clark, was transferred to the London Court, to which a fiat with a correct description had been issued, and the proofs were ordered to be transferred, the Bristol fiat being impounded. *Ex parte Burbidge*, 1 De Gex, 256.

## OFFICE FEES.

1. *Solicitor's Bill.*—Bill of solicitor of bankrupt suing out a fiat against himself, under which no assignees were chosen, ordered to be paid out of the fund in the hands of the Accountant-General without making any reserve for the office fees of 10*l.* and 20*l.* The Accountant-General ought not to be served with the petition of payment. *Ex parte Jerwood*, 1 De Gex, 373.

2. *Deficiency of assets.*—On a petition to annul a fiat with consent of creditors, the commissioner declined to certify the consent without payment of the office fees of 10*l.* and 20*l.*

Assignees had been chosen, but it was stated that there were not and were not likely to be any assets. The court requested the commissioner to certify his opinion whether there were any available assets. *Ex parte Davis*, 1 De Gex, 267.

3. *Annulling fiat.*—Where a bankrupt sued out a fiat against himself, and only one creditor proved, and assignees were chosen, but there were no assets, and the office fees of 10*l.* and 20*l.* had not been paid, the court refused to dispense with the usual certificate of the commissioner, on an application to annul with the consent of the creditor. *Ex parte Nicholls*, 1 De Gex, 331.

4. *Solicitor's Costs.*—Under the bankrupt's own fiat, there being no probability of any choice of creditors' assignees, and the office fees of 10*l.* and 20*l.* having been paid to the Accountant-General: *Held*, that they might be applied in payment of the bill of costs of the bankrupt's solicitor. *Ex parte Buchanan*, 1 De Gex, 344.

5. *Return of.*—Where a bankrupt sued out a fiat against himself which was annulled, and no creditors' assignees had been chosen, the office fees of 20*l.* and 10*l.* paid by him into the Bank, were ordered to be returned. *Ex parte Reynolds*, 1 De Gex, 373.

## OFFICIAL ASSIGNEE.

1. *Default.*—In the case of a defaulting official assignee, the court ordered that no sum

should be paid in respect of monies due to him in any bankruptcy until he had made good all the amounts due from him in other bankruptcies. *Ex parte Graham and another*, 1 De Gex, 328.

2. *Appearing separately.*—*Costs.*—Where, upon an equitable mortgagee's petition, the mortgagee and the creditors' assignees appeared by the same solicitor, the court ordered the sale to be conducted as the commissioner should think fit, having regard to this circumstance; and the official assignee was allowed his costs of appearing separately. *Ex parte Bromage*, 1 De Gex, 375.

## ORDER IN CHANCERY.

*Winding up joint-stock company.*—Form of order in Chancery under the act 7 & 8 Vict. c. 111, s. 20, for winding up the affairs of a bankrupt joint-stock company. *In re Forth Marine Insurance Company*, 1 De Gex, 335.

## PARTNERSHIP.

See *Reputed Ownership*, 4.

## PETITION TO LORD CHANCELLOR.

On a petition to the Court of Review for an injunction to restrain an action in which the plaintiff has demurred to the plea, the court makes a qualified order restricting the plaintiff as to the grounds of the demurrer. On appeal, this order is discharged, and the respondents present a petition to the Lord Chancellor for an unqualified injunction. *Held*, to be an original petition, which ought not to be presented to the Lord Chancellor, and dismissed with costs. *Ex parte Van Sandau; Ex parte Turner and another*, 1 De Gex, 303.

## PETITIONING CREDITOR'S DEBT.

An affidavit of debt filed as the foundation of an affidavit of bankruptcy, stated the demand to be for goods sold and delivered, but by the particulars of demand the greater portion of the debt was stated merely as due on bills of exchange, which, however, it afterwards turned out were given in respect of goods sold and delivered. *Held*, that the proceeding was irregular, and an insufficient foundation for an act of bankruptcy. *Greenstock, ex parte*, 1 De Gex, 231.

## PRIORITY OF SOLICITOR'S COSTS.

*Bankrupt suing out fiat against himself.*—Where a bankrupt sued out a fiat against himself, and creditors' assignees were chosen, his solicitor was ordered to be paid the amount of his bill of costs up to the choice out of the first monies received by the assignees. *Ex parte Parsons*, 1 De Gex, 342.

## PROOF.

1. *Joint estate.*—Where a partner gives a separate security for a joint debt and becomes bankrupt, the other partners remaining solvent, the creditors may have, under the separate fiat, the usual order for sale, but can only have liberty to prove for the deficiency against the joint estate. *Ex parte Leicestershire Banking Company*, 1 De Gex, 292.

2. *Costs*.—A judgment creditor has a right to prove for the costs of an action in which he obtained judgment before the bankruptcy, where the debt itself has been paid after the bankruptcy by another party liable to it. *Ex parte Cocks, re Barwise*, 34 L. O. 37.

3. *Legality of transfer of shares*.—*Provisionally registered railway company*.—A purchase by brokers, in pursuance of the order of a customer, of shares in a projected railway company, provisionally registered, held not illegal, but a sufficient ground for the admission of a proof tendered by the brokers for the loss occasioned by the non-completion of the purchase by the customer. *Ex parte Barton and another*, 1 De Gex, 316.

And see *Dividend*, 1, 2.

#### REMOVAL OF FIAT.

*Affidavit*.—The affidavit for removal of a fiat from one commissioner to another ought to state that such removal will be for the benefit of the creditors generally. *Re Pyne*, 34 L. O. 64.

#### REPUTED OWNERSHIP.

1. *Shares in water company*.—A *procedendo* ordered to issue where a commission had been superseded three years previously by consent of the creditors, on the ground that the bankrupt had not disclosed the fact of his being entitled to shares in a waterworks company, his defence being that the shares were subject to a mortgage for more than their value, but which turned out to be invalid for want of notice to the company.

Shares in such a company held subject to the law of reputed ownership, the company's act of parliament declaring them to be personal property. *Ex parte Lawrence*, 1 De Gex, 269.

2. *Acts of bankruptcy*.—By a composition deed between A. and B. and scheduled creditors of A., after reciting that it had been agreed that A. should pay the creditors 10s. in the pound, and after reciting that B. had agreed to join in the deed for the purpose of better securing payment of the composition, on having such assignment made to him as was therein-after contained, it was witnessed,—1. That A. and B. covenanted to pay the creditors the composition; 2. That in consideration of this covenant, A. assigned all his stock in trade, machinery, and effects to B. to hold as B.'s own goods and chattels; 3. That the creditors covenanted on receiving the composition to release A. Contemporaneously with this deed the leasehold trade premises were assigned by A. to B. with the privity of the creditors.

At the time of the execution of the deed all the assigned property was in the possession of certain mortgagees of the leasehold premises and machinery, who afterwards gave up possession to B. on his guaranteeing payment of the mortgage money. Immediately after the execution of the deed, B. gave the creditors his promissory notes for the amount of the composition. B. remained in possession till he became bankrupt, and after his bankruptcy a fiat

was sued out against A. by a creditor who knew of the deed, though he had not executed it. He was a friend of A., and indifferent to the payment of his debt, but permitted his name to be used by the creditors who had signed the deed for the purpose of suing out the fiat. *Held*, 1. That the composition deed was an act of bankruptcy, and not a sale for value; 2. That the assigned property was not in the reputed ownership of B.; 3. That the circumstances under which the fiat was sued out against A. did not prevent A.'s assignees from recovering the property. *In re Marshall and others*, 1 De Gex, 273.

3. *Notice of lien to holders of property abroad*.—London sub-mortgagees of shipments at Ceylon and Hong Kong send thither, directed to the parties in possession, notices of their security by the next mail, there being another and earlier mail by a different route, by which the notices might possibly have sooner reached their destination. Before, however, this could have taken place by either mode of transmission, the sub-mortgagors became bankrupt: *Held*, that the notice was sufficient to take the goods out of their reputed ownership. *Ex parte Kelsall and others*, 1 De Gex, 352.

4. *Rights of proof*.—*Nominal partnership*.—A wine merchant carrying on business under the firm of J. R. & Co., announced by a circular that he had taken his nephew into partnership. The business was thenceforth carried on under the style of J. R. sen. & Co., but as between the uncle and nephew, the latter receiving a salary only, and did not participate in the capital, profits, or losses of the concern. On both becoming bankrupt: *Held*, that a creditor who supplied goods to the firm, might prove against the separate estate of the uncle.

5. Part of the stock in trade consisted of wines in the docks, which the uncle, on announcing the partnership, directed the Dock Company to deliver to the order of the new firm: *Held*, that these wines were in the reputed ownership of the two, and ought to be administered as joint estate.

6. Other property consisted of wines in the hands of a lien creditor of the uncle, and after the announcement of the partnership, some of the wines were withdrawn and replaced by others in the name of the new firm: *Held*, that the possession of the lien creditor did not prevent the application of the 72nd section, but that those wines would, subject to the lien, be administered as joint estate.

7. Where a large number of creditors had a right of election to prove against the joint or separate estate, and the estates were not so ascertained as to enable the creditors to elect, a temporary order was made that no larger dividend should be declared of the one than of the other estate. *Ex parte Arbouin and another; Ex parte Gonne and others*, 1 De Gex, 359.

#### SECURITY.

*Goods at sea*.—A man may give a valid se-

curity on merchandize at sea belonging to him, although at the time he is ignorant of the particulars of which it consists. *Ex parte Kelsall and others*, 1 De Gex, 352.

## SET-OFF.

See *Annuity*.

## SHARES.

See *Proof of Debt*, 3; *Reputed Ownership*, 1.

## SOLICITOR.

*Purchasing estate*.—Under particular circumstances, solicitor to the fiat permitted to purchase part of the bankrupt's estate. *Ex parte Whase*, 1 De Gex, 265.

See *Office Fees*; *Priority*.

## STATUTE OF FRAUDS.

*Conversion of separate into joint demand by parol*.—A parol agreement is sufficient to convert a separate into a joint debt, such an agreement not being "a promise to answer the debt of another" within the Statute of Frauds, but the contraction of a new debt in consideration of the former being extinguished. *Ex parte Lane*, 1 De Gex, 300.

## STOPPAGE IN TRANSITU.

*Rescinding contract*.—A vendor of cotton in America, by direction of the purchasers in England, ships the cotton on board a vessel belonging to the latter, who became bankrupt before its arrival. A mortgagee of the ship, who happens to be an agent of the vendor, takes possession of the ship under his mortgage, and sells the cotton under a supposed right on the part of his principal to stop it *in transitu*, and the principal sanctions the transaction as between himself and the agent by accepting a credit in account for the proceeds of the cotton. The assignees of the purchasers then bring an action against the mortgagee for this seizure, and he pays them, under a compromise, the amount for which the cotton sold.

*Held*, that under the circumstances, the contract was not rescinded by the seizure of the cotton, but that the vendor was entitled to prove for the purchase money. *In re Humberston*, 1 De Gex, 262.

## SURRENDER.

1. *Petition*.—A bankrupt, who has not surrendered, may yet be heard, upon a petition for annulling the fiat, provided, that he was not in default, at the time when it was presented. *Ex parte Hodson, in re Hodson*, 33 L. O. 260.

2. *Costs*.—Where the bankrupt left England on account of his embarrassments, and consequently did not hear of the fiat till after the time for surrendering had expired, he was not allowed his costs on petitioning for leave to surrender. *Ex parte Perry*, 1 De Gex, 377.

And see *Annulling Fiat*, 3.

## SUSPENDING ADVERTISEMENT.

The official assignee represents the creditors sufficiently to enable the court to suspend the advertisement by consent before the choice of

creditors' assignees, although the bankruptcy is not disputed. *Ex parte Potts*, 1 De Gex, 326.

## TAXATION.

The retainer by the solicitor under such circumstances, of the amount of his bill of costs as taxed by the commissioner, and the allowance of such retainer at the audit, held no such payment of the bill as to preclude taxation. *Ex parte Rees and another*, 1 De Gex, 205.

## TENANT IN TAIL.

*Confirmation by commissioner of conveyance in fee*.—Where a trader sold an estate and conveyed it as tenant in fee simple, with the usual covenant for further assurance, and became bankrupt, and it was afterwards considered that he was tenant in tail only, it was ordered that the commissioner should be at liberty to execute a deed of confirmation to the purchaser. *Ex parte Tripp and another*, 1 De Gex, 293.

## TRADING.

*Cowkeeper*.—A farmer who rented 104 acres of arable land, which he principally used for the cultivation of caraway seeds, and who kept four cows which were not used for the purposes of his farm, but sold the whole of the milk, was held not to be a cowkeeper within the meaning of the Bankrupt Laws. *Ex parte Dering re Cramp*, 33 L. O. 356.

## TRUST.

1. *Question as to who are the cestuis que trustent*.—Upon a petition to appoint new trustees, the Court of Review will not decide any question as to who are the *cestuis que trustent*.

In case of doubt, all who by possibility may be held to fill that character must be parties. *Ex parte Congreve*, 1 De Gex, 267.

2. *Monies employed in trade*.—*Breach of trust*.—*Construction of will*.—A testator directed that it should be lawful for his wife to retain in her hands and employ in his business any part of his assets not exceeding 6,000*l.*, so long as she should think fit, if she should continue his widow, and appointed her and his son executor and executrix. The widow took the son into partnership with her in the trade, and they both became bankrupts. *Held*, that the use of the 6,000*l.* in this trade was not an employment of it in the testator's business according to the directions of the will, but was a breach of trust on which proof might be made against the joint estate. *Ex parte Butterfield*, 1 De Gex, 319.

3. *Impeachment of Deed*.—A trust deed, which could not have been impeached under a fiat sued out by any creditor, held incapable of being impeached under the bankrupt's own fiat. *Ex parte Philpott*, 1 De Gex, 346.

## WARRANT.

See *Commitment*, 3.

# RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

## House of Lords.

*Lord Camoys v. Blundell.* June 29, 1847.

CONSTRUCTION OF WILL.—TENANT FOR LIFE.—TRUST.—REVERSION.

The following is the opinion of the judges in this case:—

Mr. Baron Parke.\*—Your lordships have requested the opinion of the judges upon the following question:—

“Whether, upon the construction of the will of Charles Robert Blundell, dated 28th November, 1834, regard being had to the proofs in the cause, Thomas Weld Blundell is entitled, as tenant for life in possession, to the real estates devised by such will to John Gladstone, Robert Gladstone, and Thomas Robinson upon trust, (except such as were specifically devised to any other person or persons, and all real estates held by him in trust,) and entitled in reversion for his life to the houses and gardens by the said will devised to William Hall and James Massam respectively for the lives of the said will mentioned?”

We have considered this question proposed by your lordships, and being all agreed upon the answer to be returned to it, and the reasons for that answer, we think it unnecessary to hear any further argument.

It appears to us, upon hearing the will, and looking only at the evidence of the state of the Weld family at the time the testator made his will, and without adverting to the parol evidence received in the Court of Chancery, and, as we think rightly received, that the meaning of the words used by the testator to designate the devisee are clear; that the devise is not void for uncertainty, and that the respondent Thomas Weld Blundell is entitled to the estates mentioned in the question put by your lordships.

The question is, who is the person whom the description of devisee in the will, applied to the facts, properly fits?

In this case it is to be remarked, that he is designated not by name, but by description only; neither his christian nor his surname is mentioned, but he is described by his relation only to other individuals. The case, therefore, is not the same as if it had been a devise to Edward Weld himself, upon which supposition a good deal of the argument at your Lordships' bar has proceeded.

It may be conceded that, where a devisee is

described by his christian and surname and some other distinctive circumstances, and no person answers both descriptions, and there is nothing in the rest of the will or the admitted evidence to show who was meant, the name would prevail, and the descriptive circumstance be rejected. But the maxim “*Veritas nominis tollit errorem demonstrationis*” is not inflexible, as has been explained by Lord Chief Justice Gibbs in the case of *Doe v. Hathwaite*, 2 Moore's Reports, p. 323. For if it be clear, upon the due construction of the will with reference to the evidence of the state of the family as known to the testator, that the meaning of the testator as expressed by the will was that the person described, and not the person named, was to take, the description will prevail over the name; for the rule in question has no other object than to assist in discovering the meaning of the will, and is not applicable where it leads to a construction contrary to the expressed meaning of the testator.

Here, then, the question would be, supposing even this were a devise for a person by name, whether the context and the evidence of the state of the family does not cause the description to prevail over the designation by name? We think the context, coupled with that evidence, clearly denotes that the name of “Edward” is a mistake.

It may be admitted that the christian name is not merely the name of baptism, but the name by which a person is commonly known, and that in this case the evidence shows that Edward Joseph, the eldest son of Joseph, was commonly known by the name of Edward, so as properly to be described and take by that name if the devise had been to him. Nor is it worth while to argue whether the description “of Lulworth” (though certainly more applicable, in ordinary parlance, to the possessor of the place) would not be applicable to him though he only resided in Lulworth, and was not the possessor of the castle.

Admitting that it did, and that if there had been nothing more than a devise to Edward Weld of Lulworth, Edward Joseph the eldest son would have taken, we are of opinion that the other parts of the will, coupled with the evidence of the state of the family, do clearly point out that the devisee is the second son of Joseph Weld, the possessor of Lulworth Castle.

In the first place the devise is clearly framed so as to show that the testator meant an existing person. The limitation to that son for life, with a devise over to his first and other sons in tail, is properly applicable to an existing person, as, if it were to one not *in esse*, the limitation over would be void. If it be said that the testator might not know the rule of law, the context shows that he did, for he provides in the next clause, which comprises future sons of Edward Weld, that the estate shall be in as strict settlement upon each son and his respective issue male as the rules of law or equity allow.

Secondly, on failure of the first taker and the

\* The following judges were also present:—Mr. Baron Alderson; Mr. Justice Patteson; Mr. Justice Coltman; Mr. Justice Maule; Mr. Baron Rolfe; Mr. Justice Wightman; Mr. Justice Cresswell; Mr. Justice Erle; Mr. Baron Platt; and Mr. Justice Vaughan Williams.

other branches of Edward Weld's family, the next remainder is limited to the other brothers of Edward Weld except his eldest brother, and the will, therefore, describes Edward Weld as having an elder brother.

Thirdly, Edward Weld is described as the brother of Lady Stourton.

Taking all these descriptions together, and looking to the will alone, we have this as the description of the unnamed devisee: he is to be an existing person; the second son of an Edward Weld, and who certainly had an eldest brother, and was himself the brother of Lady Stourton.

Now, by the evidence, we have at the time of the will made Thomas Weld an existing person, the second son of Joseph Weld, who had an eldest brother, and was the brother of Lady Stourton. And we have also a non-existing child, and a possible father for him in an Edward Joseph Weld, not having an eldest brother, but himself the eldest, and having no sister Lady Stourton at all. And there is no other possible person whom the testator could have meant, unless it be one of these two. Add to this, that the description of the person as being "of Lulworth" is better adapted to one who is the possessor of that place, and not a mere resident there.

Under these circumstances, which was the devisee clearly meant by the description in the will? We entertain no doubt that Thomas Weld was that person.

It is to be observed that this construction is alone consistent with the obvious intention of the testator, that the remainder to the children of Lady Stourton should follow the remainders to the children of her brother, which would not be the case if the Edward Weld, whose second son was to take, be her nephew and not her brother.

We have to add, that the other extrinsic evidence, on which we have not relied, does not, taken altogether, lead us in the least to doubt the propriety of the conclusion to which we have come from the will and the extrinsic evidence to which we have referred as the ground of our opinion.

We, therefore, state our humble opinion to be, that the question proposed by your lordships should be answered in the affirmative.

### Rolls Court.

*Lord Suffield v. Bond.* May 7, 1847.

23RD ORDER OF 1842.—ANSWER.—NOTICE.

*The 23rd Order of 1842, which requires notice of the filing of an answer, demurrer, plea, or replication, to be given the same day to the adverse party or his solicitor, must be strictly acted on. But where an answer was filed on a Saturday, and an order nisi served the same day, while notice was not given till the Monday following, but no inconvenience was shown to have arisen; the court refused to discharge the*

*order nisi, but made the defendant pay the costs of the motion to discharge it.*

THIS was a motion to discharge an order nisi, to dissolve an injunction upon the putting in of the answer for irregularity. It appears that the answer was filed on the 24th of April, which was a Saturday, the order nisi was obtained the same day as of course; but the notice of the answer having been filed, which the 24th order of 1842 requires to be given "on the same day" to the solicitor of the adverse party, or to the party himself if he has no solicitor, was not given until the Monday following.

Mr. Wilcock and Mr. Dickenson for the motion, contended, that the court could not carry the order into execution if it allowed an answer to be acted upon before notice had been given of its being on the file; that in the case of pleas, demurrers, or replications, to which the order equally applied, as well as in that of answers, great inconvenience might result from such a construction of the order. They referred to *Bradstock v. Whateley*, 6 Beav. 61.

Mr. Turner and Mr. Toller, contra, said that the order was a substitution for the notice customarily given by the clerks in court, which in its origin was a mere act of civility; that no substantial inconvenience had been sustained by the plaintiff; and that by taking an office copy of the answer he had waived the irregularity; and asked how long were the consequences of such an irregularity to hang over the defendant's head.

Lord Langdale, after ascertaining that in form the notice was for the day on which the answer was filed, said, that he thought the order must be strictly enforced. It was true that it was a substitute for what was originally a courtesy of office only; but it had become a law of office; he considered that when the order nisi was obtained, it was on an implied undertaking to serve the notice the same day. Then it was clear that here there had been a default: the question was only what was he to do. He was urged to discharge the order, whatever might be the result; but he did not think so. He thought that it would be sufficient to let the order stand, making the defendant pay the costs. If any inconvenience could have been shown to have resulted to the plaintiff, it would have been his duty to have relieved him from it; but he could not find that any inconvenience had arisen. There was no suggestion that it had interfered with the right of excepting. Ordered, that the order nisi stand; the defendant paying the costs of the present motion.

### Vice-Chancellor of England.

*Druce v. Denison.* June 16, 1847.

CONSISTORIAL COURT OF LONDON.—BONA NOTABILIA.

*A probate or administration granted by the Consistorial Court of the Bishop of London, is not sufficient to obtain the payment of money out of court.*

In this case a suit had been instituted for the administration of the estate of the testator, Samuel Denison, and by a decree in the cause dated July 1801, it was declared that on the death of a tenant for life, the testator's next of kin would become entitled to a share of the testator's personal estate. The tenant for life had died, and M. Hoyle, who claimed under one of such next of kin, now presented a petition, praying that the Accountant-General might be directed to transfer to her the share to which she was entitled, as personal representative of such next of kin. The property consisted of certain sums invested in Bank 3 per cent. Annuities and Old South Sea Annuities, and the petition stated, that the various administrations and probates through which they made out her claim as such personal representation, had been granted by the Consistorial Court of the Bishop of London only, and the question was, whether they were sufficient for the purpose without going to the Prerogative Court of the Archbishop of Canterbury.

Mr. Shapter, for the petition. The administration granted by the Consistorial Court is sufficient, and although a prerogative administration is usually obtained, yet it is more a precautionary measure than one absolutely necessary. The cases of *Challnor v. Murhall*, 6 Ves. 118; *Newman v. Hodgson*, 7 Ves. 409; *Thomas v. Davies*, 12 Ves. 417; and *Docker v. Horner*, 3 Brown, 240, although usually cited as proving that a prerogative administration or probate is necessary to obtain money out of court, do not go that length; they were all applications under provisional grants from courts other than the Consistorial Court of London, and not one of them appears to have been a London probate or administration. It must be admitted, that in *The King v. Capper*, 3 Price, 262, there is a dictum that stock for the purpose of probate and administration is supposed to lie within the archbishopric of Canterbury; but that was a mere dictum, and had nothing to do with the question then before the court.

The Vice-Chancellor. What species of chattel are you applying for? If it is a debt at all, it is one due from government, which does not reside anywhere.

Mr. Shapter. If the liability of government to answer for the debt were the test, the prerogative administration would be insufficient; the Archbishop of Canterbury having no jurisdiction in the province of York, in Ireland, or in Scotland. It is a debt due from government secured by act of parliament, and payable at the Bank, and therefore forms *bona notabilia* in London, for which a consistorial probate or administration is the proper one. The case of *Smith v. Stafford*, 2 Wills. Ch. Rep. 166, and *Ex parte Horne*, 7 Barn. & Cress. 632, are parallel ones; and since the case of *Scarth v. Bishop of London*, 1 Hagg. 625; 1 Wms. exors. 228, note, the Bank of England always transfer stock on a probate taken in the Consistorial Court. He also cited *Young v. Eworthy*, 1 M. & K. 215; *Pearce v. Pearce*, 1 Keen, 76, and 1 Dan. Ch. Pr. 2nd edit. p. 305.

The Vice-Chancellor said, that he should not make the order, if he did so, it would be altering the usual practice of the court, but he recommended it to be mentioned to the Lord Chancellor.

*Gatland v. Tanner.* July 6th, 1847.

ORDER OF 13TH APRIL, 1847.—38TH ORDER OF AUGUST, 1841.—DISMISSAL OF BILL.—APPEAL PENDING.

*Where an appeal is pending from a case deciding a point of practice material to the conduct of a suit, on an application being made to dismiss the plaintiff's bill for want of prosecution, the court, on a proper case being made out by the plaintiff, will direct such application to stand over until judgment on such appeal has been given.*

In this case it appeared that plaintiff's bill was filed on the 12th October last; that on the 3rd of December, the defendant Tanner applied for time to answer, and the Master gave him one month. On the 31st December, Tanner filed his answer: exceptions were immediately taken to it, and it was reported insufficient on all the points excepted to. Exceptions were taken to the Master's report, and on the 26th April last, they came on to be heard, when the Vice-Chancellor overruled the Master's report, acting on his decision in *Mason v. Wakeman*, Leg. Obs., Aug. 29th, 1846.\* No proceedings had since been taken in the cause, and Mr. Lewin now moved to dismiss the bill as against defendant Tanner, for want of prosecution, with costs.

Mr. Miller, in opposition to the motion, urged that since the Vice-Chancellor's last decision in the cause, the case of *Mason v. Wakeman* had been brought on an appeal before the Lord-Chancellor, and his lordship had since heard the arguments, and had taken time to consider his judgment; that the proceedings in the cause had been delayed in order that the Lord Chancellor's decision might be known, and that, in case the Vice-Chancellor's decision should be affirmed, plaintiff intended immediately to amend her bill. He also contended that, by the Order of April 13th, 1847, 9 Beav. part 1, a discretionary power is given to the court either to dismiss plaintiff's bill, or to put him on terms, and that, under the circumstances of the case, it would be but reasonable that plaintiff's application should be postponed until the Lord Chancellor had given judgment in *Mason v. Wakeman*.

Mr. Lewin urged that it was unreasonable thus to wait; the Lord Chancellor might postpone his decision for an indefinite time; be-

\* In this case it was decided, that if the whole bill is demurrable, a defendant may, under the 38th Order of August, 1841, decline answering such portions of the bill as he objects to answer, although he may have answered the remainder.

sides it was open for the plaintiff to appeal from any decision which the Vice-Chancellor might make in the cause.

The Vice-Chancellor ordered the motion to stand over until the Lord Chancellor had given his judgment in *Mason v. Wakeman*.

Vice-Chancellor Knight Bruce.

*Cope v. Russell.* March 23, 1847.

PRACTICE.

*Substituted service of the subpoena to appear and answer on the solicitor of a defendant, that defendant being out of the way and his place of abode unknown, was refused on motion made for that purpose.*

Swift moved that service of the subpoena to appear and answer, might be made on Mr. C., the solicitor of the defendant, who was out of the jurisdiction of the court, and whose address was not known. The plaintiff had recovered judgment against the defendant in an action at law, and the defendant then filed a bill to restrain the levying of execution, but such bill was dismissed. In the action and in the suit, Mr. C. acted as the defendant's solicitor, and in another action by another party against the defendant, Mr. C. also acted as his solicitor. The defendant having withdrawn himself, and it not being known where he was, an attempt was made to make a compromise of the demands of the plaintiff, and of the other party who had brought his action, in all which Mr. C. acted as the solicitor of the defendant. Under these circumstances, and on the authority of *Hobhouse v. Courtney*, 12 Sim. 140; *Kinder v. Forbes*, 2 Beav. 503; *Hornby v. Holmes*, 4 Hare, 306, and 9 Jurist, 225, 796, the motion was made.

His Honour intimating, that the last cited case was a strong authority for the motion, still declined to make the order, as, if made, it had better be so by a higher branch of the court.

Motion refused.<sup>b</sup>

Queen's Bench.

(Before the Four Judges.)

*In re Ford.* Easter Term, 1847.

JUDGE'S ORDER.—ATTORNEY.—COSTS.

F. & R., attorneys in partnership, are employed by J. R. dies, and F. is afterwards employed by J. as his attorney, and in respect of work done after the death of R. certain deeds are given into the custody of F. by J. The bill of costs for work done by F. after the death of R. was paid by J., but the joint account was unpaid.

Held, that F. had no lien on those deeds so as to enable him to retain them in respect of the bill of costs due from J. to F. & R.

An order had been made by Mr. Justice Erle, at chambers, requiring Ford, an attorney, to deliver up certain deeds and documents to one Jones, under the following circumstances.—Ford and Rogers had been in partnership as attorneys. Rogers died, but before his death they had been employed as the attorneys of Mr. Jones, and since the death of Rogers, Ford had acted as the sole attorney for Mr. Jones. Two bills of costs had been delivered in, one amounting to 52l. 6s. 8d. for work done by Messrs. Ford and Rogers, and the other amounting to 286l. for work done by Ford alone. The latter bill has been paid by Mr. Jones, but the amount of the first bill was barred by the Statute of Limitations. The deeds and writings now required to be delivered up had been deposited with Ford in respect of business done since the dissolution of the partnership. Mr. Justice Erle was of opinion that Ford had no lien on them.

Mr. Wordsworth applied for a rule to show cause why the judge's order should not be set aside, and contended that Ford had a lien upon these deeds, and was entitled to retain them till the bill of costs due from Jones to Ford and Rogers had been paid.

Lord Denman, C. J. It seems to me that it is quite right, and that we ought not to interfere with this order.

Patteson, Mr. Justice. I think it is quite right. Copartners are in the nature of agents for one another. Ford received these articles, which he is called on to deliver up, not on the part of himself and another, but of himself only. Yet it is said that he has a lien on them,—a lien which has attached on them for a debt due to him and to another person for whom he is an agent. But it does not appear that he had held the things for any one else but himself.

Wightman and Erle, J.s., concurred.

\*Rule refused.

Common Pleas.

*Sharland v. Leifchild.* Easter Term, 1847.

PLEA TO A DECLARATION ON CONTRACT.—ARGUMENTATIVE DENIAL.—WHAT AMOUNTS TO THE GENERAL ISSUE.

*Where the declaration in an action of assumpsit complained of a breach by the defendant of a condition on which the sale of certain houses had been made to the plaintiff, namely, "that the vendor would deliver an abstract of title to the purchaser, or his or her solicitor," and the plea of the defendant stated that at the time of the promise it was agreed as part of the contract, that the defendant should deliver an abstract of the title, commencing with a certain specified deed, and that extent only. Held, that the plea was an argumentative denial of the contract in the declaration, and bad as amounting to the general issue.*

ASSUMPSIT. The first count of the declaration alleged a sale of divers houses by auction, upon certain conditions, and amongst others,

<sup>b</sup> The motion was made before the Lord Chancellor, on the 25th of May, and refused.



"that the vendor would deliver an abstract of title to the purchaser, or his or her solicitor, who should examine the same with the principal deeds at Chelmsford; and that on payment of the remainder of the purchase money, the vendor would execute, at the expense of the purchaser, a proper conveyance or assurance to him or her as he or she might direct." It then alleged that the plaintiff had become the purchaser of the said houses, &c., "subject to the said conditions of sale, and to the performance thereof;" and further averred mutual promises and performance by the plaintiff of his part of the conditions. Breach, that although a reasonable time for that purpose had elapsed, yet the defendant had not caused to be delivered to the plaintiff, or any solicitor of the plaintiff, any abstract showing such a good and sufficient title to the said houses as the plaintiff was, according to the said conditions of sale, entitled to require to be shown by the abstract therein mentioned as to be delivered by the vendor; and that the defendant, after the making of the agreement, &c., delivered as and for an abstract showing, &c., an abstract which did not show such a good and sufficient title to the said houses as according to the said conditions of sale the plaintiff was entitled to require, &c., but which, on the contrary, showed a less good and less sufficient title, &c. Plea, that it had been agreed as part of the contract, that the defendant should duly deliver an abstract of the title to the said houses, commencing with a certain deed of conveyance from, &c., only, but that he, the defendant, should not be required to furnish any other abstract, and by no means to go into any previous title or evidence thereof, notwithstanding the deeds or documents relating to the prior title might be mentioned, &c.; and that the defendant did, within a reasonable time, &c., deliver to the plaintiff's solicitor an abstract of his title to the said houses, commencing with the said deed of conveyance, and which shows a good and sufficient title in that behalf to the said houses, &c., commencing with the said deed of conveyance. Verification. Special demurrer that the plea was an argumentative traverse of the allegation in the declaration, which is to the effect that the defendant did not deliver such an abstract as showed such a good title, &c., as the plaintiff was, according to the said conditions of sale, entitled to require to be shown, and that the plea amounted to a plea of the general issue. Joinder in demurrer.

*Peacock*, (T. Jones with him,) in support of the demurrer. The vendor of an estate is impliedly bound to make out a good title to the purchaser. *Souter v. Drake*, 5 B. & Ad. 992; *Doe d. Gray v. Stannion*, 1 M. & W. 695, and the defendant here therefore was bound to deliver an abstract showing a good title as stated in the declaration. The plea however sets up a qualified contract different from that in the declaration, and is clearly therefore bad. It does not admit the promise in the declaration and excuse the performance, but, on the contrary, denies the former, and sets up another

contract which makes it a bad plea. *Jones v. Nanney*, 1 M. & W. 333; *Whittaker v. Mason*, 2 Bing. N. C. 359; *Brind v. Dale*, 2 M. & W. 775; *Nash v. Breeze*, 11 M. & W. 352. The case of *Smart v. Hyde*, 8 M. & W. 728, will be relied upon on the other side, but that case is clearly distinguishable from the present.

*Couch*, contra. *Smart v. Hyde* shows that this plea does not amount to the general issue. Then taking the declaration and plea together, the latter rather admits the contract in the declaration, and sets up a collateral contract to the effect that if a particular kind of abstract were delivered, no other would be required, and if stated merely as something collateral, the plea is not bad. *Parker v. Palmer*, 4 B. & A. 387; *Sievetring v. Dutton*, 15 L. J., N. S., C. P. 276.

*Wilde*, C. J., referred to *Meyer v. Everth*, 4 Camp. 22.

*Peacock* was heard in reply.

*Wilde*, C. J. There must be judgment for the plaintiff. The plea is bad as being an argumentative denial of the contract alleged in the declaration. It was admitted in the course of the argument, that the true meaning of the condition of sale was the delivery of an abstract showing a good title to the interest sold. Such being the meaning, the question is, whether the plea is or is not a denial of that promise which is alleged in the declaration on the part of the defendant to deliver a good abstract of title in the sense which properly belongs to that allegation. Now, the effect of the plea is, that the defendant did not engage to deliver a good abstract of title at all, but only one commencing from a deed of a certain date, and amounts to the defendant's saying, the promise I made is a different one from that alleged in the declaration. It is well known that if a defendant means to answer an action by denying that he made the contract, he must do so by apt terms, and not argumentatively. Therefore, whenever the language of the plea is properly a denial of the contract in the declaration, and it is circuitously expressed, the plea is bad, for such a denial must always be direct, and no case has been cited at all impugning that principle; on the contrary, they all proceed on a distinct recognition of it. It is quite clear that a plaintiff need not set out all the terms and conditions of the contract, but only so much as there has been a breach of. In the case cited of the sale of certain bales of wool, (*Sievetring v. Dutton*;) the declaration averred that a certain quantity of wool had been sold, which would embrace any kind of wool, leaving it open to the plaintiff to prove what wool he could. The defendant then might plead that the sale was of a particular kind of wool and still the declaration would remain perfectly consistent. The plea would not falsify the declaration, but, on the contrary, would merely state that the sale took place under circumstances which did not compel the defendant to take the wool. So it will be found in most of the cases that the defence has been quite consistent with the allegations in the declaration. In the present case, however, the

plea states distinctly a contract inconsistent with the contract in the declaration, not by a denial in terms, but by a statement of facts inconsistent with the averments in the declaration, and therefore, on the principle of all the cases, the plea is a bad one.

*Coltman, J.*, concurred.

*Maule, J.* The plea is in effect a circuitous denial of the contract alleged in the declaration. It states a contract inconsistent with that in the declaration in point of time, and in requiring the delivery of a particular deed. It is therefore an argumentative and inferential denial of that which, if denied at all, should be denied directly. The cases quoted do not in any way interfere with this principle. *Smart v. Hyde* was certainly a very peculiar case, but even there the court went on the very ground on which we hold this plea bad. On the whole, I think the plaintiff is entitled to the judgment of the court.

*Cresswell, J.* Whatever discussion may arise as to the other cases referred to being within the principle laid down, there can be no doubt that the present case falls within that principle, and that the plea is bad, being in effect a denial of the contract in the declaration.

Judgment for the plaintiff.

### Court of Exchequer.

*Bayley v. Buckland and others.* Trinity Term, 8th June & 3rd July, 1847.

#### APPEARANCE FOR MEMBER OF JOINT-STOCK COMPANY.—JUDGMENT.—IRREGULARITY.

*In an action against the members of a joint-stock company the managing director authorised an attorney to accept service of process for all the defendants. The case proceeded, and after notice of trial, the same attorney, by the authority of the managing director, consented to a judge's order for payment of debt and costs. The money not having been paid, final judgment was signed, and execution levied on the goods of a defendant who had no notice of the proceedings. The court set aside the judgment as irregular.*

*In such case, if a defendant has had notice of the proceedings, the court will not interfere, unless the attorney be insolvent, when they will relieve the defendant on equitable terms. If the attorney be solvent, the court will leave him to his remedy against the attorney.*

THIS was an application on behalf of a Mr. Gordon to set aside a judgment and execution. It appeared that the defendant Buckland was the managing director of a joint-stock company called the Vale of Neath Brewery Company, and that Gordon was a shareholder in the company. The action was brought on a promissory note against fifty-two defendants who were shareholders in the company, including Gordon. After the writ of summons issued, Buckland wrote a letter to the plaintiff's attorney, in which he stated that he was sorry to find that process

had issued, and that he would instruct his attorney to accept service. Accordingly, writs were sent to Mr. Leeds, an attorney at Neath, who appeared for all the defendants, except one for whom an appearance was entered *sec. stat.* The cause then proceeded, and after notice of trial was given, Leeds consented to a judges' order for payment of debt and costs. The money not having been paid, final judgment was signed against all the defendants, and execution issued, under which the goods of Gordon were seized by the sheriff. It was sworn that Gordon had never given any authority, direct or indirect, to Leeds to appear for him. It was also stated that Leeds was in solvent circumstances.

*Martin* showed cause, and argued that the court would not set aside proceedings carried on by an attorney without authority, unless it appeared that the attorney was insolvent. He cited *Anonymous*, Salk. 86, 88; *Stanhope v. Firmin*, 3 Bing. N. C. 301; *Mudry v. Neuman*, 1 C. M. & R. 402; *Williams v. Smith*, 1 Dow. P. C. 632; *Barber v. Wilkins*, 5 Dow. 305; *Hubbart v. Phillips*, 13 M. & W. 702.

The *Attorney-General*, in support of the rule, cited *Robson v. Eaton*, 1 T. R. 62; *Hambridge v. De La Crouée*, 16 Law Jour. C. P. 85; *Doe d. Davies v. Eylon*, 3 B. & Adol. 785.

*Cur. adv. vult.*

*Rolfe, B.*, (after stating the facts). The rule of law hitherto has generally been considered, as stated in an anonymous case in Salkeld, 86, that where an attorney takes upon him to appear, the court looks no further, but proceeds as if the attorney had sufficient authority, and leaves the party to his action against him, but they qualified it in Salkeld, 88, stating that the judgment was regular, "but that if the attorney be not responsible or suspicious, they would set aside the judgment, for otherwise the defendant has no remedy, and any one may be undone by that means." We are disposed to lay down a different rule, and to confine the liability of the defendant to cases in which the course of the proceedings have given him notice of the action being brought against him. When, therefore, a defendant has been served with process, and an attorney without authority appears for him, we think the court must proceed as if the attorney really had authority; because in that case the defendant having knowledge of the suit commenced, is guilty of an omission in not appearing and making defence by his own attorney, if he has any defence on the merits. There the plaintiff is without blame, and the defendant is guilty of negligence. But even in that case, if the attorney be not solvent, we should relieve the defendant upon equitable terms, if he had a defence on the merits. If the attorney were solvent, it would not be unjust to leave the defendant to his remedy by summary application against him. On the other hand, if the plaintiff, without serving the defendant, accepts the appearance of an unauthorised attorney for the defendant, he is not wholly free from the imputation of negligence. The law requires him

to give notice to the defendant by serving the writ, and he has not done so. The defendant there is wholly free from blame, and the plaintiff not so; and upon the same principle on which we before proceeded, we must set aside the judgment as irregular, with costs, and leave the plaintiff to recover those costs and the expense to which he has been put from the delinquent attorney by summary proceeding. The case of *Hubbard v. Phillips*, 3 M. & W. 702, is an authority for such an application. Now, applying those principles to the present case, it is clear that this judgment is irregular, and the rule must be made absolute for setting it aside.

Rule absolute.

### Court of Review.

*Ex parte Norton re Robinson.* June 11, 1847.

#### AFFIDAVIT.

*An affidavit, sworn, but not signed, was allowed to be taken off the file, for the purpose of being signed, upon an undertaking that it should be refiled, after being signed, without any alteration.*

Mr. *Amphlett* moved in this case that an affidavit which had been filed on the part of the respondent, which had been sworn, but by accident had not been signed by the defendant, might be taken off the file merely for the purpose of being signed and re-sworn. The case was mentioned by request of the officer of the court, who declined allowing this step to be taken without the sanction of the court.

The *Chief Judge* said, he would grant the application, upon an undertaking to swear the affidavit again, in the same state in all respects as at present, except the signature, which being added, it might be refiled.

This undertaking being given, the order was made.

### PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

*Royal Assents.* July 9, 1847.

Threatening Letters.  
Custody of Offenders.

### House of Lords.

#### NEW BILLS IN PROGRESS.

Ecclesiastical Jurisdiction. For 2nd reading.

Police. For 3rd reading.

Trustees Relief. In Committee.

Clergy Offences. Postponed.

Poor Laws Administration. For 3rd reading.

Poor Removal. For 2nd reading.

House of Commons Costs Taxation. Passed.

Charity Trustees. In Committee.

Tithes. Passed.

Copyhold. For 3rd reading.

### House of Commons.

#### NEW BILLS IN PROGRESS.

Commons Inclosure, (No. 3.) For 2nd reading.

Trustees Relief. For 3rd reading.

Insolvent Debtors. To be reported.

Health of Towns. Postponed.

Custody of Offenders. Passed.

Joint Stock Companies. Passed.

Winding up Joint Stock Companies (No. 2). For 2nd reading.

Prisons. In Committee.

Bankruptcy and Insolvency. For 3rd reading.

Masters in Chancery Affidavit Office. Passed.

Registration of Voters. In Committee.

Parliamentary Electors. Postponed.

Parliamentary Electors, (No. 2.) For 2nd reading.

Vexatious Actions. In Committee.

Poor Removal. Passed.

Trust Monies Investment. For 3rd reading.

#### THE CHARITY TRUSTEES BILL.

This Bill constitutes the Treasurer of each County Court a corporation sole, for the purpose of enabling the judge to order the charity estates to be vested in such treasurer, without the expense of Deeds of Conveyance to New Trustees. The bill permits this to be done, on the application of the parties interested, but is not obligatory. It does not appear to be liable to the objections of the bill of last session; but the necessity of the act should be made apparent.

Here is another instance of a proposed alteration in the law at the very close of the session. It will have the effect of abridging professional business, and we hope the public will derive a corresponding advantage.

#### EXPECTED PROROGATION OF PARLIAMENT.

It appears to be settled that the session will terminate on Thursday next, the 22nd instant. Wednesday will be comparatively a *dies non*: so that a few days only remain to complete such of the bills as are intended to be passed.

#### THE EDITOR'S LETTER BOX.

The letters which are unavoidably postponed shall be attended to in an early number.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JULY 24, 1847.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

### LEGAL RESULTS OF THE SESSION OF PARLIAMENT.

THE session has at length terminated, and the Parliament is defunct. We cannot felicitate our readers upon the passing of a single measure connected with the law which holds out any considerable prospect of benefit to the public, or even of practical improvement; but, perhaps, it is matter of congratulation that so little has been done to unsettle, and that the spirit of change has passed so lightly over our legal institutions.

Many of the bills, in the progress of which the profession may be supposed to have been peculiarly interested, were abandoned or defeated in the course of the session.

The bills placing the administration of the Poor Laws on a different footing, and the Poor Amendment Act Removal Bill, however, have obtained the Royal assent. The Masters in Chancery Affidavit Office, the House of Commons Costs' Taxation, and the Trustees Relief Bill have also passed. The most important, perhaps, we might say the only important legal measure of the session is, the Bankruptcy and Insolvency Bill.

The government has succeeded in passing the Bill for abolishing the Court of Review, and transferring the Insolvent Jurisdiction heretofore exercised by the Commissioners of Bankruptcy, having pertinaciously refused to listen to the representations made by independent members, at all sides of the house, as to the expediency of postponing the measure until the next session. So many changes and alterations have been made in the bill since

its introduction into the House of Commons, that until we have had an opportunity of seeing it in the form in which it obtained the Royal assent, it would be premature to enter upon a critical examination of its provisions. The scope of the measure, however, is so narrow as to forbid us to anticipate that any amendment has been effected in the Law of Bankruptcy or Insolvency. A change of jurisdiction is the utmost that was contemplated or attempted. The trading community have complained, discussed, considered, and associated, in order to give effect to their remonstrances as to the unsatisfactory state of this branch of the law. Those remonstrances have hitherto been utterly ineffectual. The Commissioners of Bankruptcy, who were entrusted with the administration of the law, whilst pointing out its imperfections, have publicly and repeatedly deplored the harshness of its operation upon honest insolvents, and the encouragement it affords for the practice of successful frauds upon creditors. The evil is admitted, but the session has terminated without any attempt to redress it. The Insolvent Act, (5 & 6 Vict. c. 146,) requires that the commissioner shall be satisfied that an insolvent's petition and schedule are true, before he is authorised to make a final order for the protection of such insolvent. The last Insolvent Act, 7 & 8 Vict. c. 96, s. 2, prescribes a form of petition, and enacts, that if such petition shall not be in the form therein prescribed, "such petition shall be dismissed." No power is given to the court in which the petition is filed to amend it under any circumstances. Many hundreds of petitions

have been dismissed for defects of form. One case was reported in this work,<sup>a</sup> in which three petitions filed one after another by the same insolvent, were dismissed, upon objections to the form of the petition. The commissioners have repeatedly expressed their regret that, under such circumstances, and where no objection arose upon the merits of the case, they could not assist an insolvent, and permit him to amend his petition. Again, there is no power in any case to allow an opposing creditor his costs; and where a fraudulent debtor has his conduct exposed and investigated, it is at the expense, not of the insolvent's estate, or of the general body of creditors, but at the expense of the particular creditor who has already, perhaps, suffered a serious pecuniary injury at the hands of the insolvent. These obvious defects of the existing law are left without any attempt at amendment. Instead of repealing the acts which have produced so much confusion and dissatisfaction, the great measure of the session has been, to entrust the administration of the law so universally condemned to new judges, with the prospect that as soon as they have mastered its provisions, and endeavoured to put such a construction on them as may be thought conducive to the ends of justice, the whole system shall be altered, and laws founded on a different principle substituted. A course of proceeding so much opposed to the dictates of experience indicates a very remarkable insensibility to the importance of the subject, and induces us to look rather with apprehension than hope to the effects of a measure passed under such circumstances.

The Vexatious Actions Bill, referred to in a former number,<sup>b</sup> and the very important bill introduced so late in the session as on the 8th July, by Messrs. Greene, Milner, Gibson, and Parker, for amending the Acts for winding up the affairs of Joint-Stock Companies, have both been withdrawn, it would seem, without discussion.<sup>c</sup>

## CONSTRUCTION OF THE STAMP ACT.

### AGREEMENT FOR PURCHASE OF RAILWAY SCRIP.

THE number of the Exchequer Reports published during the last week contains the

<sup>a</sup> *In re Shetler*, Leg. Obs., vol. 31, p. 274.

<sup>b</sup> *Ante*, p. 163.

<sup>c</sup> For other minor bills postponed, see p. 304 *ost.*

report of a case,<sup>a</sup> in which two questions were decided touching the construction of the Stamp Act, (55 Geo. 3, c. 184.)

The action was brought to recover the price of railway scrip, and the evidence to support the plaintiff's case was, that on the 12th August, 1846, the defendant gave the plaintiff a verbal order, and subsequently, on the same day, and in respect of the same transaction, signed a memorandum in the following form:—"Bought of Nathan Knight (the plaintiff) fifty shares in the Huddersfield, Halifax, and Bradford Railway Company, at 10*l.* per share." This document was unstamped, and lost before the trial. It was proposed, however, to give secondary evidence of the contents; but this was objected to, on the ground that the lost paper contained the only legal evidence of the contract, and ought to have been stamped. *Cresswell*, J., who tried the cause, thought the objection well-founded, and nonsuited the plaintiff.

It was afterwards argued, that the above memorandum was not an agreement requiring a stamp, and that the transaction was within the exemption in the Stamp Act relating to "goods, wares, or merchandise." In reference to the first point, it was submitted, that nothing is liable to stamp duty as an agreement, except that which both parties reduce into writing, and that the memorandum signed by the defendant was not a contract binding on both the parties, but a mere acknowledgment by one of them of an antecedent parol contract.

The court, however, whilst admitting that a mere proposal is not within the statute, held that this was a memorandum in which the defendant put down what he meant to be the terms of the contract, and which the plaintiff received as such. It was evidence of the contract, and within the words of the Stamp Act. The case of *Hughes v. Budd*<sup>b</sup> was referred to, where an agreement signed by the plaintiff only was held to be valid as an agreement, and to require a stamp.

Upon the second point it was argued, that railway scrip was "merchandise," as a thing accustomably merchantable in the market, and transferred by delivery; but the court held, that the sale of scrip could not be said to be the sale of "goods, wares, or merchandise," within the meaning of

<sup>a</sup> *Knight v. Barber*, 16 Mees. & W. 66.

<sup>b</sup> 8 Dowl. P. C. 478.

the exemption in the Stamp Act: The exemption was intended to protect *bona fide* mercantile transactions of the sale and purchase of goods, but this was a mere agreement between one speculator and another, whereby the party acquired a right to the allotment of certain shares to be afterwards issued in a particular company. A judicial construction had already been put upon these contracts in the case of *Humble v. Mitchell*,<sup>c</sup> in which shares in a joint-stock banking company were held not to be within the words "goods, wares, and merchandises," within the 17th section of the Statute of Frauds, and the same construction must prevail here. Upon these grounds, the court was unanimously of opinion, that the ruling of the learned judge at the trial was correct.

In the course of the argument in *Knight v. Barber*, the definition given by the late Justice *Erskine* in *Vaughton v. Brine*,<sup>d</sup> was adverted to, viz., "that such agreements only required to be stamped as would be evidence against both the contracting parties;" but *Parke*, B., thought a more correct definition was given in the case of *Beeching v. Westbrook*,<sup>e</sup> namely, "that a written instrument, to come within the terms of this clause of the Stamp Act, must have been made with the intention of containing in itself the terms of an agreement between the parties." This definition was not adverted to in the more recent and somewhat celebrated case of *Vollans v. Fletcher*,<sup>f</sup> in which, it may be remembered, the Court of Exchequer determined, that a letter of allotment of shares on which the allottee afterwards paid the deposit, was not evidence of a contract requiring a stamp within the meaning of the Stamp Act.

## NOTES ON EQUITY.

### RESPONSIBILITY OF SOLICITORS.

A SOLICITOR to whom money is entrusted by his client for the purpose of investment on mortgage, is bound to see, not only that the

title to the property is good, but that the value is sufficient.

In a recent case before the Master of the Rolls,<sup>g</sup> it appeared that the defendant, a solicitor, applied to the plaintiff, a clergyman, and requested him to lend to John Wyn the sum of 3,000*l.* on mortgage of certain lands, which had recently been valued at the sum of 3,942*l.* 10*s.* The plaintiff, who seems to have had entire confidence in the solicitor, agreed, gave him a cheque for 3,000*l.*, and left the completion of the arrangement in his hands. A mortgage security was forthwith executed by Wyn, which bore date the 27th April, 1836. The solicitor retained it in his possession, and continued to pay to the plaintiff the interest at 4½ per cent., as it from time to time became due, with one accidental omission. In November, 1840, he refused to continue further payment, stating that the rents were insufficient.

On investigation, it turned out that the security was considerably deficient; that Wyn held part of the property, valued at 375*l.*, as fee-simple only in right of the life interest of his wife therein; that other part, valued at 529*l.*, had been altogether omitted from the security; that the residue was subject to a debt of 50*l.* and a mortgage of 200*l.* due to the solicitor under a deed of June, 1835. It was not shown that the nature of the security was made known to the plaintiff until the year 1839 or 1840. Wyn became insolvent, and the property was bought in at a sale by auction for 2,200*l.* This being insufficient to pay the mortgage to the plaintiff, negotiations took place with a view to obtain payment from the solicitor, which being ineffectual, this bill was filed. The bill prayed a declaration that the sum of 3,000*l.* advanced by the plaintiff, was improperly invested by the defendant, the solicitor; and that the plaintiff was entitled to the benefit of the indenture of the 27th April, 1836, or to the benefit of the mortgaged premises, free from the charge thereby created.

The Master of the Rolls, after stating the case and reciting the deeds, observed, "that the defendant was not agent and solicitor only, but also trustee. He received money from the plaintiff, without any security whatever but the confidence which the plaintiff placed in him. It was his plain duty, in his character of solicitor and agent only, to invest the money on proper security, and to use no fraud, misrepresentation, or deceit; but, having obtained the money, he constituted himself trustee of it, and must, in my opinion, be treated as trustee from the time when he obtained the possession of it, or the power over it.

It was wholly inconsistent with his duty, either as agent or as trustee, to take any security less than that on which he prevailed on Mr. Craig to advance the money.

If, as he alleges, he did not at the time when he produced the valuation to Mr. Craig, know that the life interest of Mrs. Wyn had been valued as the absolute property of Mr. Wyn;

<sup>c</sup> 11 Ad. & El. 205.

<sup>d</sup> 1 Man. & Gr. 559; 1 Sc. N. R. 258.

<sup>e</sup> 8 Mees. & W. 411.

<sup>f</sup> See *ante*, p. 119. The case of *Vollans v. Fletcher* was cited before *Wilde*, C. J., in a case of *Chapman v. Hearn*, on the last day of the London sittings at nisi prius after Trinity Term, and the learned C. J. declined to act upon the authority of that decision.

<sup>g</sup> *Craig v. —*, 8 Beav. 427.

if, as he alleges, he did not at the same time know that the property not absolutely conveyed to Wyn, had been valued at £791, it is perfectly clear that he knew both facts in a few days afterwards, and whilst the money of Mr. Craig was in his hands or power. When the deed was executed, he knew that it comprised only the life interest of Mrs. Wyn, although the property had been valued as an absolute interest of her husband; and he knew that he had withdrawn from the security property stated in the valuation to be worth £291; and he had then in his hands or power the sum of 3,000l. belonging to the plaintiff, which he parted with on that reduced security. In so acting, he was not acting as the solicitor or agent of the plaintiff to invest the money on a given security, but was assuming the power and discretion to invest the money on an altered security, and his conduct cannot be reconciled with the performance of his duty, either as solicitor and agent, or as trustee, and I am afraid it cannot be attributed to mere negligence. The utmost value was stated to be 3,942l. 10s., and when from this the value of the property excluded is deducted, together with the difference arising from the improper value of the life estate of Mrs. Wyn; and when it is further considered that the defendant was at the time obtaining a payment for himself, or a client for whom he was personal security, and mixing up the plaintiff's money and transaction with his own money and transaction, there is too much reason to think that the defendant must have had some distinct object of his own in view.

The case appears to me to be a case of combined agency and trust, and I am of opinion that the defendant has so acted as to make himself personally answerable to the plaintiff for the whole sum advanced.

The defendant seems to have thought he was only agent or solicitor: he says, he believes that the plaintiff was induced to accept the mortgage on seeing the valuation of Mr. Eyton, and of Wiley and Ash; but he states for himself, that he was not aware of the value of the premises, and did not consider it to be his duty to ascertain the actual value of the property on which the plaintiff advanced the money; that is, in the defendant's view of his duty: he may prevail upon his client to advance money on a representation communicated by the defendant himself, without any knowledge of its truth. He further states, that he does not believe that the plaintiff relied on any thing said by him as to the value, but made inquiries in various quarters of the value of the security, but he has produced no evidence whatever in support of this allegation." His lordship directed that an account of what was due to the plaintiff should be taken, and the estate sold,—the purchase-money of which was to be applied in payment, and the defendant was to be held personally responsible for the deficiency and for the costs of the suit.

## NOTICES OF NEW BOOKS.

*A Digest and Index to all the Statutes. Part the Fourth. Bringing the Statutes and Decisions thereon down to the end of the Last Session. To which is added a General Index of the four parts.* By GEORGE CRABB, ESQ., of the Inner Temple, Barrister-at-Law. London: A. Maxwell & Son. 1847. Pp. 487.

MR. CRABB has adopted a convenient plan of posting up the statutes with the decisions which have taken place on their construction. The subjects comprised in this part of the digest are of considerable importance. Amongst them are the following:

Admiralty; Aliens; Auctions; Attorneys; Barristers; Buildings; Companies; Copyholds; Copyright; Criminal Law; Debtor and Creditor; Evidence; Factories; Lunatics; Poor; Railways; Seamen; Shipping; &c.

Before stating the substance of the recent enactments on these various matters, Mr. Crabb gives a general review of the previous statutes. This is a very useful method of proceeding, and the references to the former parts of the Digest enable the reader to find the whole state of the Statute Law, nor any given subject.

As an example of the work we shall select the Digest relating to *Barristers and Attorneys*, contained in the present part:—

1st, As to barristers, Mr. Crabb sets forth that

"There are several miscellaneous provisions respecting barristers, as to their qualifications to be commissioners of inquiry respecting the exchange and purchase of glebe lands, by the 56 G. 3, c. 52; 1 G. 4, c. 6; 6 G. 4, c. 8; to be commissioners and judges in the Court of Bankruptcy, by the 1 & 2 W. 4, c. 56, *see* Dig. Part I., tit. BARRISTERS; to act as revising barristers in the registration of voters, by 6 & 7 Vic. c. 18, repealing and amending 2 & 2 W. 4, c. 45, *ib.* Part II. tit. PARLIAMENT.

"The duty on the admission of a barrister is fixed by the 55 G. 3, c. 184, Sched. Part I.

"The 3 E. 1, c. 29, subjects a serjeant pleader or other to imprisonment for a year and a day for deceit, and never after to be heard to plead; the 13 E. 1, c. 49, prohibits the king's counsel from receiving any land that is in plea before H. M.; and by the 2 & 3 W. 4, c. 46, s. 52, a barrister is not to attend in a revising barrister's court; but by the 7 W. 4, and 1 V. c. 114, any person charged with a felony may be admitted to make defence by counsel; so by 8 & 9 V. c. 10, in proceedings in bastardy, parties may be assisted by counsel; the 6 G. 3, c. 53, superseding prior statutes, regulates



what oaths are to be taken by barristers in general; and the 10 G. 4, c. 7, regulates what are to be taken by Roman Catholics. By the 2 G. 4, c. 93, the rules of the institution of any savings' bank are to be submitted to a barrister; and the 10 G. 4, c. 56, amended by 4 & 5 W. 4, c. 40, contains a similar provision for friendly societies, *ib.* Part I, tit. BARRISTERS, BANKS (SAVINGS), FRIENDLY SOCIETIES, and ROMAN CATHOLICS; also *post*, tit. BASTARDY.

"By the 5 & 6 W. 4, c. 76, the Municipal Corporations Act, and the 5 & 6 V. c. 98, to amend the law concerning prisons, barristers are appointed to arbitrate in cases of difference concerning certain accounts; and the 7 & 8 V. c. 93, extends the provisions of these two acts, see *INFRA*.

"7 & 8 V. c. 93. *Enabling Barristers appointed to arbitrate between Counties and Boroughs to submit a Special Case to the Superior Courts.*

"Sect. 1.—After reciting the 5 & 6 W. 4, c. 76, and 5 & 6 V. c. 98, enacts that in any case in which a barrister has been or hereafter shall be named as in the recited acts, to arbitrate between the parties, he shall, upon the requisition in writing of the treasurer of the county, or of the visiting justices of the prison, or of the town clerk of the borough, on behalf of the council of the borough, who shall be interested in the decision of such borough, be empowered, if he think fit, before making his award, to state one or more special cases touching any of the matters referred to him for the opinion of such one of the superior courts of common law at *Westminster* as he shall direct, or to raise in any award to be made by him at any time any questions for the opinion of such court; and such court shall hear and determine the matter according to the practice of the court upon special cases, and make such order as to the costs, and by and to whom and in what manner the same shall be paid or borne, as to such court shall seem meet; and the decision of the court shall be binding on such barrister in making his award.

"Sect. 2.—In case any barrister so named dies or refuses to act, or is disabled from acting either from ceasing to practise as a barrister, or for any other reason, before making his award, the several parties before mentioned may name another barrister for the like purposes, and the barrister so newly named shall have the same authority to decide the matter in difference as if no other appointment had been made; and in every such case, in which, before the passing of this act, a second barrister has been appointed to determine matters left unsettled or undetermined by the barrister first appointed for that purpose, the appointment of such barrister shall be deemed good."

The 1st Part (p. 188,) contains references to the following statutes, regarding the offices conferred on barristers:—

"2 & 3 W. 4, c. 45, as to revising barristers.  
"56 Geo. 3, c. 52; 1 Geo. 4, c. 6, and 6

Geo. 4, c. 8, as to barristers of three years standing, appointed as commissioners for the exchange or purchase of lands.

"3 Ed. 1, c. 20, as to deceit.

"7 W. 4, and 1 Vict. c. 114, authorizing defence by counsel.

"13 Ed. 1, c. 49, as to King's or Queen's Counsel.

2nd. As to attorneys and solicitors, the learned author says that they have been the subject of many statutes, several of which are now repealed and their provisions consolidated in the General Act, 6 & 7 Vict. c. 73, for which he refers to the 3rd part of the Digest, title "Solicitors."

"Attornies and solicitors have been the subject of many statutes, several of which are now repealed and their provisions consolidated in the General Act, 6 & 7 V., c. 73, see Dig. Part III., tit. SOLICITORS. Among the statutes or particular enactments which remain in force, are such as relate to making attornies or appearing by attorney, as the 20 H. 3, c. 10, for making suits to several courts; 6 E. 1, c. 8, in pleas of trespass; 13 E. 1, St. 1, c. 10, for making general attornies; 13 E. 1, St. 1, c. 15, for infant eloignes suing by *prochein amy*; 7 R. 2, c. 14, for persons sued upon writs of *præmunire* who are departing the realm with H. M.'s licence; 7 H. 4, c. 13, for impotent persons on reversal of outlawries; 15 H. 6, c. 15, for religious persons; 18 El., c. 5, for informers who may sue by attorney; 29 El., c. 5, s. 21, for defendants in penal actions; 11 G. 4, and 1 W. 4, c. 65, for persons under disabilities; 7 W. 4, and 1 V., c. 114, for persons tried on any charge of felony. See further, Dig. ATTORNIES AND SOLICITORS, Parts I., II., SOLICITORS, III.

"Attornies are prohibited by several statutes, as the 3 E. 1, cc. 25, 28; 13 E. 1, cc. 49; 1 E. 3, St. 2, c. 14; 7 R. 2, c. 15; 5 El., c. 9, from maintaining suits unlawfully, see Dig. Part I., tit. CHAMPERTY AND MAINTENANCE. The 3 E. 1, c. 29, inflicts a penalty on a serjeant or pleader committing deceit; the 7 A., c. 12, s. 4, declares that an attorney, suing out process against an ambassador, shall be deemed a violator of the law of nations, and may be punished as the Lord Chancellor thinks fit, see Dig. Part I., tit. AMBASSADOR; the Annuity Act, 53 G. 3, c. 141, prohibits solicitors from taking more than 10s. in the 100*l.* for brokerage, *ib.* tit. ANNUITIES. Embezzlements by attornies are now made punishable by the 7 & 8 G. 4, c. 29, *ib.* tit. LARCENY; the 52 G. 3, c. 63, on the same subject, which is included in the saving clause of 6 & 7 V., c. 63, Sched. I., Part II., was already repealed by the 7 & 8 G. 4, c. 27, *ib.* Part I., tit. LARCENY. The Uniformity of Process Act, the 2 & 3 W. 4, s. 29, provides, among other things, that the name of the attorney or party suing, and his place of abode, shall be indorsed upon the writ of *copias*, and if it be not issued by the attorney's au-

Authority, that the defendant may be discharged, *ib.* **PROCESS, tit. Attorney, Indorsement.**

"Persons convicted of forgery or perjury are disqualified to act as attorneys by the 13 G. 1, c. 29, see **Dig. Part II., tit. ATTORNEYS and SOLICITORS**, confirmed by 6 & 7 V., c. 73; so an attorney or solicitor may not act as such while he is a prisoner, 6 & 7 V., c. 73, s. 31; so he may not act as agent for any unqualified person in any court of law or equity, *ib.* s. 32; so he may not be a justice of the peace while he continues attorney or solicitor, *ib.* s. 33; except in places having justices of the peace by charter, *ib.* s. 4, see **Dig. Part III., tit. SOLICITORS.**

"The service of clerkship and all that is necessary for an attorney's clerk to do to qualify himself for admission as attorney or solicitor, is now regulated by 6 & 7 V., c. 73, ss. 5—15, *ib.* **tit. SOLICITORS**, by which the 2 G. 2, c. 23; 6 G. 2, c. 27; 12 G. 2, c. 13; 22 G. 2, c. 46; 23 G. 2, c. 26, are repealed; the duty payable on the admission of attorneys is fixed by the 55 G. 3, c. 184, **Sched. Part I.**

"Formerly the admission of an attorney in one court did not qualify him to practise in another court; but by different acts now repealed this rule had been departed from, and now by the general provision in the 6 & 7 V., c. 73, s. 27, persons duly admitted in one court are capable of practising in all other courts, on signing the rolls of each respective court. The inrolment of attorneys in courts of law, and solicitors in courts of equity, is also regulated now by the same statute, 6 & 7 V., c. 73, s. 20, see **Dig. Part III., tit. SOLICITORS.**

"The granting certificates to attorneys and solicitors is regulated now by the 25 G. 3, c. 80; 37 G. 3, c. 90; and 6 & 7 V., c. 73, ss. 21—25, except that ss. 27, 31, of the latter Act, (for which see **Dig. Part II., ATTORNEYS, &c., tit. Certificate,**) are repealed by the 6 & 7 V., c. 73, and other provisions substituted, *ib.* **Part III., tit. SOLICITORS.** By this last Act re-enacting the provisions of former acts, persons practising without certificate cannot recover fees.

"The provisions in the 18 H. 6. c. 9, as to filing warrants of attorney, in the 32 H. 8, c. 32, as to entering warrants of attorney, and the 18 El. c. 14, and 4 & 5 A., c. 16, as to filing warrants of attorney, are repealed by the 6 & 7 V., c. 73, **Sched. I., Part II.**; but warrants of attorney are provided for by the 3 G. 4, c. 39; 1 & 2 V., c. 110, ss. 9, 10; and 6 & 7 V., c. 66, see **Dig. Part III., tit. WARRANTS.**

"The Annual Indemnity Acts contained a provision that defects in the service, &c., of attorneys should not disqualify persons who had served them, if otherwise entitled to be admitted; also that application for striking any attorney off the rolls on account of any defect in the articles of clerkship should be made within twelve months after admission and inrolment; but these provisions are now made perpetual in the general act, 6 & 7 V., c. 73, ss. 28, 29; and by the 7 & 8 V., c. 86, further protection is given to clerks against the ne-

glects of those whom they have served, see **INFRA.**

"The repealed act, 2 G. 2, c. 23, s. 23, contained some provisions respecting the taxation of bills of costs delivered in by attorneys and solicitors, which has been re-enacted with considerable additions and alterations by the 6 & 7 V., c. 73, ss. 37—43, see **INFRA.**"

Mr. Crabb then states so much of the 6 & 7 Vict. c. 73, as relates to the taxation of costs, namely, ss. 37 to 41, inclusive, and gives the several decisions on the construction of those important clauses. To which is added the 7 & 8 Vict. c. 86, for the relief of clerks to attorneys and solicitors who have omitted to inrol their contracts, &c.

These extracts may not be uninteresting at the present time, when the exclusive preference shown by the legislature to the higher grade of the profession is undergoing considerable discussion. It may not be matter of surprise that where barristers and attorneys are both eligible to fill particular offices, the superior influence of the former should generally prevail; but it is neither politic nor right in government to exclude any class of men from the possibility of promotion to useful offices. The public service requires, at least, that the power of selection should not be limited to one class.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### THREATENING LETTERS.

10 & 11 VICT. C. 66.

An Act for extending the Provisions of the Law respecting Threatening Letters and accusing Parties with a view to extort money. [9th July, 1847.]

1. 7 & 8 G. 4, c. 29; 9 G. 4, c. 55; 7 W. 4, and 1 Vict. c. 87.—Persons sending threatening letters, accusing others with certain crimes, with a view to extort money, guilty of felony.—Whereas it is expedient to extend the provisions of so much of the statute made and passed in the 7 & 8 G. 4, c. 29, intituled "An Act for consolidating and amending the Laws in England relative to Larceny and other Offences connected therewith," and of an act passed in the 9 G. 4, c. 55, intituled "An Act for consolidating and amending the Laws in Ireland relative to Larceny and other Offences connected therewith," as relates to the offences of sending Threatening Letters, and also, so much of the statute made and passed in the 1 Vict. c. 87, intituled "An Act to amend the Laws relating to Robbery and Stealing from the Person," as relates to the Offence of accusing Persons of unnatural crimes, and to make further Provisions for the Punishment of such

**Offences.** Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual, and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That if any person shall knowingly send, or deliver, or utter to any other person, any letter or writing accusing or threatening to accuse either the person to whom such letter or writing shall be sent or delivered, or any other person, of any crime punishable by law with death or transportation, or of any assault with intent to commit any rape, or of any attempt or endeavour to commit any rape, or of any crime in and by the said first-mentioned act defined to be an infamous crime, with a view or intent to extort or gain, by means of such threatening letter or writing, any property, money, security, or other valuable thing, from any person whatever, or any letter or writing threatening to kill or murder any other person, or to burn or destroy any house, barn, or other building, or any rick or stack of grain, hay, or straw, or other agricultural produce, or shall knowingly procure counsel, aid, or abet the commission of the said offences or either of them, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding four years, and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment.

2. *Persons accusing others of crimes herein-before mentioned, with the view of extorting money, &c. guilty of felony.*—That if any person shall accuse or threaten to accuse either the person to whom such accusation or threat shall be made or any other person of any of the crimes herein-before specified, with the view or intent of any of the cases last aforesaid to extort or gain from such person so accused or threatened to be accused, or from any other person whatever, any property, money, security, or other valuable thing, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding four years, and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment.

#### CUSTODY OF OFFENDERS.

10 & 11 VICT. c. 67.

**An Act to amend the Law as to the Custody of Offenders.** [9th July, 1847.]

1. 5 G. 4, c. 84.—*So much of 5 G. 4, c. 84, as enacts that male offenders sentenced to transportation may be kept to hard labour out of England extended to offenders convicted in Ireland.*—9 & 10 Vict. c. 26.—Whereas, by an act

passed in the 5 G. 4, c. 84, intituled "An Act for the Transportation of Offenders from Great Britain," it was enacted, that it should be lawful for his Majesty, by any order or orders in council, to declare his royal will and pleasure that male offenders convicted in Great Britain, and being under sentence or order of transportation, should be kept to labour in any part of his Majesty's dominions out of England to be named in such order or orders in council: And whereas it is expedient that it should be made lawful to remove to the same places of confinement any male offender convicted in Ireland who would have been removable thereunto if he had been convicted in Great Britain: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That it shall be lawful for one of her Majesty's principal Secretaries of State to direct that any male offender convicted in Ireland, and being under sentence or order of transportation, may be removed to and confined and kept to labour in any such place of confinement out of England, in like manner as if he had been convicted in Great Britain; and every offender who shall be so removed shall continue in custody, and shall be kept to labour in a place of confinement to be so provided, or any other place of confinement to be from time to time provided by her Majesty out of England, until her Majesty shall otherwise direct, or until the offender shall be entitled to his liberty; and that all the enactments of the said act relating to the returns to be made concerning every person in custody in each of such places of confinement, and the powers and duties of the superintendent and overseer having the custody of any such offender, and to the treatment of such offenders while so confined, and the time during which they shall be so confined, shall, subject to the amendments made in the said act by an act passed in the last session of parliament, intituled "An Act for abolishing the Office of Superintendent of Convicts under Sentence of Transportation," apply to all such male offenders convicted in Ireland and removed under the authority of this act, as if they had been convicted in Great Britain and removed under the authority of the first-recited act to such places of confinement.

2. *Offenders under sentence or order of transportation may be removed to any prison in Great Britain.*—That it shall be lawful for her Majesty, by an order in writing, to be notified in writing by one of her Majesty's principal Secretaries of State, to direct that any persons under sentence or order of transportation within Great Britain shall be removed from the prisons in which they are severally confined to any other of her Majesty's prisons or penitentiaries in Great Britain, there to be confined for such time as her Majesty by any such order notified as aforesaid shall direct, not exceeding the time for which they might have been lawfully confined in the prisons from which they shall

have been severally removed; and the expense of maintaining any such person in the prison to which he shall be removed under this act, and any other additional expense incurred in such prison by such removal and confinement, shall be defrayed in like manner as the expense of maintaining any such person in any place of confinement appointed under the first-recited act.

## ELECTION OF LAWYERS FOR THE NEXT PARLIAMENT.

New candidates from the ranks of the profession are coming forward. "Another and another still succeeds."

Mr. *Humfrey*, Q. C., of the Midland Circuit, will be proposed for the Borough of Cambridge, on the Conservative interest. This gentleman is a bencher of Lincoln's Inn, and was called to the bar in June, 1823.

Mr. *Bethell*, Q. C., is a candidate for Frome, a small constituency, represented since 1832 by Mr. Sheppard, a Conservative, formerly a merchant. Mr. Bethell is a bencher of the Middle Temple, and was called to the bar in November, 1823. He has the largest practice in the court of the Vice-Chancellor of England, to whose kindness he is indebted for an adjournment of the court for two days, to enable him personally to conduct his canvass, and sue for "the sweet voices" of the electors,—a useful lesson of urbanity.

According to the arrangement amongst the liberal candidates for the borough of Marylebone, Serjeant *Shee* retires, and Mr. *Whittle Harvey* will go to the poll under very favourable auspices.

Mr. *Charles Pearson* is well supported in the borough of Lambeth, to every elector of which, being upwards of 13,000, he has distributed an able address.

Sir *Fitzroy Kelly*, it seems, has transferred his regards from Cambridge to Lyme Regis.

Mr. *Freshfield* is proceeding, under most promising circumstances, in the city of London, where, along with many other classes of electors, he receives the support of a large number of solicitors. He will, doubtless, bestow his best attention on the grievances which they seek to redress, in relation, not only to their own just interests, but the due administration of the laws, and their wise and careful amendment.

Mr. *Bremridge*, the Coroner for Devonshire, is likely to be returned for the borough of Barnstaple, where he practises with great credit as a solicitor.

## CRIMINAL LAW.—SECONDARY PUNISHMENT.

To the Editor of the Legal Observer.

### CULTIVATION OF WASTE LAND.

As an adjunct to what had been proposed in my last letter for reaping the harvest of the seas by convicts transported to vessels posted for the purpose, we may now turn to the no less certain and more needful supplies from the soil in the cultivation of waste lands, which are to be found in great abundance in every quarter of the empire. This would be attended, however, with such difficulty and expense, that it certainly does not seem to be practicable during their state of punishment and probation. *Divide et impera* does not apply here as it does on board a ship. But though it could not safely or economically be undertaken by the convicts, the same objection would not hold as it regarded those who had passed the ordeal of their punishment, and were to all appearance desirous of flying from, instead of into, crime again for a maintenance. When discharged and put in possession of their little capital gained by them and set apart for the purpose of their outfit, to such men it might, and probably would, be the most acceptable mode to apply it and their labour upon the cultivation of the wastes. As this subject differs so entirely from that of the fisheries, both as to material and the application of labour, a more particular statement will be requisite the more readily to embrace it. Though it cannot be considered at all less practicable or beneficial, nor in the end less secure, yet it is to be carried out by different means. What leads me very earnestly to the recommendation of such measure is, the proved fact of its most salutary influence in what is properly called the allotment system. This system is simply the letting to a labourer such a small plot of land as he can cultivate by himself and family without interfering with his accustomed labour. For this he pays a rent equal to that of the general farmer, and no more, except what may suffice for a like proportion of rates and taxes. A quarter of an acre is the general average that has best answered the purpose. This, well cultivated by the spade, yields the small tenant about 5*l.* a year in the value of his produce in feeding his family and his pig. The salutary effects of this system are too well established upon the very best evidence to admit of doubt, and, quoting from the Labourers' Friend Society's records, the following examples are given as particularly applicable to the present purpose. It demonstrates the value of the system in preventing crime, and also in restoring the criminal again to an honest position in society:—

"The parish from which the following report is furnished contains about 2,000 inhabitants, and previous to 1834, when the allotments were first granted, the apprehensions for different offences against the laws amounted to 34 in one year, and in the years 1840, 1, 2, and 3, there was not one. The names of the following are

formed characters have been furnished, but for obvious reasons we suppress them and give numbers only.

"No. 1 was committed to the county prison in 1834, for housebreaking. He had an allotment of land in 1837, and received a prize the second year for general good conduct.

"No. 2 was committed in 1832, (with another,) for sheep stealing, and attempting or proposing to murder the watchman; being found guilty, he was imprisoned, and his accomplice was transported for life. He was admitted a tenant in 1836, and has since conducted himself with propriety, and is regular in his attendance at one of the chapels in the parish.

"No. 3 was committed in 1832 for highway robbery, and at the same time was suspected of passing counterfeit coin. The prosecutor, from some cause, was prevented from appearing against him, consequently he was acquitted. He had an allotment granted to him in 1836. The first year he received a prize of 2*l*. for good conduct; the second year one pound; the third year he received a certificate of the entire approbation of the committee; and the fourth year one pound. He has now removed from the village, and placed by the liberality of a neighbouring gentleman in a comfortable cottage to which is attached two acres and a half at a very moderate rent.

"No. 4 was sent to the treadmill for a short period for disorderly conduct. He had two roods of land allotted to him early in 1839, and since that time has given no cause whatever for complaint.

"No. 5 was sentenced to three months imprisonment in 1834, for felony. He had an allotment granted him in 1838, and since that time he has conducted himself with much propriety.

"No. 6 was committed to prison for a short period in 1833. In 1838 he had an allotment of land, and is now a very honest and industrious character."

The extracts go on to twelve cases, and all are in like manner favourable to the reformation of the parties, and their entire restoration to all the advantages of civil society. Such proofs of the beneficial tendency of the allotment system are beyond all arguments to satisfy every unprejudiced mind. The matter is simply here how best to practise it in regard to convicts after their period of punishment is ended. On the plan before stated in my former letter of the discipline and constant and beneficial employment of them, it may be fairly presumed that their past correction will have fitted them admirably for beginning a more advantageous and entirely independent course on their own account. For such, however, a larger farm than a quarter of an acre would be needed, as their whole livelihood would be probably thence derived. In all cases then where parties are not engaged in labour for others, from one to three acres, would not be too small. The proportion could very easily be adjusted according to circumstances, and varying with them.

Now, then, as to the eventual risks likely to attend the measure; for land would have to be taken or purchased at least sufficient for the first operation. Assuming the number of 500 discharged convicts without other means of immediate employment, save on the land to be so let to them, 1,000 acres at least would be the amount needed for the purpose. The rent being that of the general farmer, say at one pound an acre, what security would there be for the payment of 2*l*. per annum for two acres from each tenant? Pursuing the necessary course that each must take in the cultivation of his farm by the spade, he will within the first few months, in the digging and cropping of his farm, have made it in value to the rent, so that if he could go no further, the most improbable thing that can be, the rent would be secured, and the further he went on, the better also would be the security in the land itself; that the risk would be gradually lessening as the benefits were gradually extending. But as the tenant would have earned a little money to start with, the greater, therefore, the probability that no difficulty whatever would exist in this respect. The examples are taken in the strongest way against the experiment, and prove in truth that there is no risk in it.

If the allotment farms were established near the curing stations, they would to a considerable extent benefit each other; the refuse of the latter being taken off to enrich the soil of the other, and so increase its produce. The produce of the former again thus increased, furnishing a portion of the food to the inmates of the curing house. The reciprocal advantages are indisputable, and they equally tend to the restoration and advancement of character, so that by slow but secure steps and degrees the mass of crime is transformed into one of productive industry and contentment. We may now return to the common question of profit and loss in the whole of the proposed measure. If it were clearly shown that the saving hence arising will be very considerable, then all doubt or hesitation ought consequently to cease, and the readiest and easiest means adopted to carry the plan into operation. Taking the sum of 150,000*l*., then, as the amount now annually spent in imprisonment only and punishment on board the hulks at home, then let us see how this could be best applied to the fisheries. 100 or 150 vessels fitted up for the deep-sea fisheries on the west coast of Ireland would require one-third or more of the aforesaid capital, as it may be called, when thus applied. But the expenditure does not occur again for many years, and in the meanwhile it provides the means for repayment from the profits of the undertaking. In this there is a striking improvement over the present mode of expenditure of the same amount. Now, then, a certain portion of clothing is to be provided for 4,000 persons, and the whole of their daily maintenance. Assuming the sum of 150,000*l*. year for each, this would require 60,000*l*. more. Such outlay will always under any scheme

stances occur. We have still left the sum of 40,000*l.* or 30,000*l.* to be applied in the erection of the curing department, and in the taking or purchasing of waste land for allotments. Dividing this latter sum, it will probably suffice for both purposes, but cannot occur again to the like extent; on the contrary, it bears the character of an investment of so much that could scarcely be more profitably made. In the second year, with the same income, we should require not a great deal more than 60,000*l.* to be expended in maintenance, thus saving the remainder for other purposes as may be required. As an increase may arise in crime, so would there thus be the increased means of meeting it, though not for vessels to an equal amount, yet in considerable numbers, till the amount of punishment of many convicts gradually expired. This diminution would go on every year, and make way consequently for a like portion of fresh criminals. Let us now look to the other side of the account,—the returns that may be well expected and relied upon. In the deep-sea fisheries there is but little, if any, variation in the supplies. They suffice, as has been seen, to yield 15 per cent. profit in the case before quoted. This profit embraces, of course, every outlay of outfit and maintenance of the crews, and also their wages. Upon this sure footing then, already so clearly proved by actual experiment, is it going too far to assume that the whole of the money requisite for maintenance will be returned? that 60,000*l.* a year, more or less, will be saved? It seems to follow as a matter of course. But we have more, we have returns on the invested capital that give an adequate remuneration for such investment; so that unless the most gross mismanagement takes place, no loss whatever ought to be incurred. I have forbore to go into details, or minutely to carry out further estimates where the ground taken is of a nature so novel and untried. If the general statements are well-founded and near the mark, they will not fail, doubtless, in their respective particulars. It should not, however, prevent the experiment being tried, even if the estimates should exceed the returns, or even come short of the expenditure. The question is this, can 150,000*l.* a year be better laid out and more to the interest of the country and the reformation of the convicts by the means proposed than by the present mode? Is it better to punish rather than reform them;—to provide unproductive rather than productive labour for them, and afterwards to turn them adrift to commit new crimes and misdemeanors?

JOHN ILDEBERTON BURN.

## CONTENTIONS AT THE CHANCERY BAR.

THE Court of Chancery, amidst all the complaints of its procrastinations and tediousness, has enjoyed the reputation of being the most gentlemanly tribunal in the

kingdom. Advocates whose nerves were not strong enough to endure the turmoil and contention of the common law bar, or the animated conflicts of a *nisi prius* or assize court, and who shrunk from the angry disputes at the Old Bailey, deemed their feelings safe from outrage, and their temper from irritation, in the presence of the judges of the High Court of Chancery. There might be an occasional sarcasm from a Hald or a Sugden, an elaborate joke from a Wetherall, or a flash of wit from a Rose, which might produce a slight determination of blood to the head of the opponent, but they were always administered without acrimony, and led to no breach of legal friendship.

Now, however, it seems that the stormy discussions, not only of "the other side of Westminster Hall," as it used to be called, but of the Criminal Courts, where some allowance may be made for zeal in cases of life or death, are transferred to the hitherto decorous pulchre of a court of equity, and in the presence of a judge who, above all others, "bears his high office so meekly," and with such unvarying urbanity to every one.

We cannot introduce to our readers "the scene," as described in the newspapers, between Mr. Purton Cooper and Mr. Bethell, Counsel of her Majesty, learned in the law, but shall extract from the pamphlet of Mr. Cooper his version of the facts, vouched by the authority of several of his brethren:

"Early in the morning of Tuesday, the 13th instant, a cause was called on in the Vice-Chancellor of England's Court. Mr. Bethell was the leading counsel for the plaintiff, and Mr. Cooper was the leading counsel for the defendant. It had been arranged on the preceding day, the cause being one of little importance, but nevertheless, likely to occupy a considerable time, that the junior counsel for the plaintiff should proceed, notwithstanding Mr. Bethell's absence in the House of Lords. On the cause being called on, no counsel appeared for the plaintiff. When the Vice-Chancellor took his seat the junior counsel for the plaintiff had intimated to Mr. Cooper his intention to open the case; but there were circumstances which afterwards induced a belief in the mind of Mr. Cooper, and, as the result has shown, a similar belief in the mind of the Vice-Chancellor, (although his Honour was not so fully acquainted with those circumstances,) that in consequence, apparently, of some new pressure from the client, such junior counsel had finally determined, probably with reluctance, to take the chance of the defendant being unable to avail himself of the defendant's default, an experiment of late very often, and but too successfully, made. The plaintiff's



licitor was present when the cause was called on, and got up and protested generally against any advantage being taken of the absence of counsel; but he did not state that his junior counsel was in the neighbourhood of the court, nor did he intimate that such junior counsel would be prepared to go on in his leader's absence.

"Mr. Cooper, therefore, at the instance of the defendant's solicitor, took the usual order dismissing the plaintiff's bill with costs, on production of an affidavit of service of the subpoena to hear judgment. At the like instance of the defendant's solicitor, Mr. Cooper indorsed his brief and delivered it to him.

"The Vice-Chancellor then proceeded with the other causes. Subsequently, the plaintiff's junior counsel came into court, but nothing passed. Afterwards Mr. Bethell unexpectedly arrived from the House of Lords. Immediately, upon seeing Mr. Bethell enter the court, Mr. Cooper, anticipating the possibility of an application that the cause might be heard, communicated with the defendant's solicitor. The nature of that communication will sufficiently appear from what ensues. The answer of the defendant's solicitor was at first verbal, but almost immediately afterwards, written. The verbal answer and the written answer were in substance the same. The written answer was as follows:—'If the defendant's consent to the cause being heard by the Vice-Chancellor is necessary, I can only say that such consent will *not* be given. The bill has been dismissed with costs, and the Vice-Chancellor has *not*, as I conceive, any power to open the matter, and the defendant positively refuses to give any consent.' The words in *italics* are underlined.

"After some other business had been disposed of, Mr. Bethell proceeded to open the cause in question, when Mr. Cooper stated what had passed, viz., that the cause had been called on; that no counsel had appeared for the plaintiff; and that in consequence an order had been made dismissing the bill;—that he had communicated with the defendant's solicitor, who had given an answer (then only a verbal one) to the foregoing effect.

"What ensued is here copied and abstracted from notes made by several gentlemen who were present on the occasion:—Mr. Bethell said, that the proceeding of Mr. Cooper was a most 'disgraceful' proceeding. Upon this, Mr. Cooper, after expressing his surprise and sorrow at the use of the term 'disgraceful,' said, that if his advice had had any influence with the defendant's solicitor, the cause would, by consent, have been again placed in the paper for hearing. Upon the Vice-Chancellor declining to hear the cause, without the consent of the defendant's solicitor, Mr. Bethell said, 'I think this is one of the most discreditable and that was ever witnessed in a court of law.' Mr. Cooper:—'You use language often that nobody pays any regard to. With reference to his Honour's refusal to hear the cause, Mr. Bethell said, 'If

your Honour does not do that now, which I earnestly press you to do, you will be laying down a precedent, if such things are permitted, which will render it a matter for serious consideration whether counsel shall continue to practise in a court which will permit such an advantage to be taken of an accident.' Mr. Bethell then said, that a representation made by Mr. Cooper to the court was 'false.' Mr. Cooper repeated the epithet 'false' several times, noticing with deep regret that it came from a counsel who, in point of business, was at the head of his Honour's court; and he then alluded to the impossibility of his manifesting his sense of the affront in the manner customary in past times. Contempt he would not say that he felt. Pity he certainly did feel. His position both at the bar, and in society happily rendered what had fallen from Mr. Bethell quite harmless."

Mr. Purton Cooper, in his preface to this statement, observes, that

"The conduct of the bar, and especially of its leading members, belongs to the public. The only effectual control over such conduct is the opinion of the public. The mode of redress, to which recourse was formerly had, on occasions when language of insult was used, has become obsolete, and any attempt to revive it, and particularly in the legal profession, would, without doubt, meet with unsparing and, perhaps, not unmerited ridicule. \* \* \* But still words spoken in a court of justice, and by those whose avocation it is to aid largely in the administration of justice—words, which, although if the same be true, they dishonour him to whom they are applied, yet if they are untrue, dishonour no less him by whom they are uttered, ought not to pass unnoticed; and the only notice, which modern usage seems now to permit, is to make those for whose benefit our courts are instituted the arbiters."

We have omitted some of Mr. Cooper's observations, which were doubtless written under excitement, and which seem unnecessary to his vindication.

## NEW COMMISSION ON THE LAW OF MARRIAGE.

THE following is a copy of the Commission issued by her Majesty, to inquire into the State of the Law relating to Marriages in the Queen's dominions and in Foreign Countries.

VICTORIA R.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, To the Right Reverend Father in God John Bishop of Lichfield, our right trusty and well-beloved councillors, James Stuart Wortley, Stephen Lushington, Doctor of Civil Law, and Anthony Richard Blake, and our trusty and well-beloved Edward Vaughan



Williams, Knight, and Andrew Rutherford, Esquire, greeting: Whereas an humble address has been presented to us by the knights, citizens and burgesses, and commissioners of shires and burghs in parliament assembled, humbly praying, that we would be graciously pleased to appoint a commission to inquire into the state and operation of the Law of Marriage, as relating to the prohibited degrees of affinity, and to marriages solemnized abroad, or in the British colonies: Now, know ye, that we, reposing great trust and confidence in your knowledge and ability, have authorized and appointed, and do by these presents authorize and appoint you, the said John Bishop of Lichfield, James Stuart Wortley, Stephen Lushington, Anthony Richard Blake, Sir Edward Vaughan Williams, and Andrew Rutherford, to be our commissioners for the purposes aforesaid: And for the better effecting the purposes of this our commission, we do by these presents give and grant to you, or any three or more of you, full power and authority to call before you such persons as you shall judge likely to afford you any information upon the subject of this our commission, and also to call for, have access to, and examine all such books, documents, registers and records as may afford the fullest information on the subject, and to inquire of and concerning the premises by all other lawful ways and means whatsoever: And we do by these presents will and ordain, that this our commission shall continue in full force and virtue, and that you our said commissioners, or any three or more of you, may from time to time proceed in the execution thereof, and of every matter and thing therein contained, although the same be not continued from time to time by adjournment: And our further will and pleasure is, that you do, with as little delay as possible, report to us, under your hands and seals, or under the hands and seals of any three or more of you, your several proceedings under and by virtue of this our commission, together with what you shall find touching or concerning the premises: And we further ordain that you, or any three or more of you, may have liberty to report your proceedings under this commission from time to time, should you judge it expedient so to do: And for your assistance in the due execution of these presents, we have made choice of our trusty and well-beloved Herman Merivale, Esquire, to be secretary to this our commission, and to attend you, whose services and assistance we require you to avail yourselves of from time to time as occasion may require.

Given at our Court at St. James's, the 28th day of June 1847, in the eleventh year of our reign.

By her Majesty's command.  
(signed) G. GREY.

## ORDERS IN CHANCERY.

### ATTENDING BILLS.

April 13th, 1847.  
Right Honourable Charles Christopher

Lord Cottenham, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Henry Lord Langdale, Master of the Rolls, and the Right Honourable Sir Lancelot Shadwell, Vice-Chancellor of England, doth hereby in pursuance of an act of parliament passed in the fourth year of the reign of her present Majesty intituled, "An Act for facilitating the Administration of Justice in the Court of Chancery," (3 & 4 Vict. c. 94,) and of an act passed in the fourth and fifth years of the reign of her present Majesty, intituled "An Act to amend an Act of the Fourth Year of the Reign of her present Majesty, intituled 'An Act for facilitating the Administration of Justice in the Court of Chancery,'" (4 & 5 Vict. c. 52,) and in pursuance and execution of all other powers enabling him in that behalf, order and direct, that the rule and order hereinafter set forth shall henceforth be, and for all purposes be deemed and taken to be, a general rule and order of the High Court of Chancery, viz.:—

The plaintiff is not to obtain an order of course for leave to amend his bill after a defendant (being entitled to move) has served a notice of motion to dismiss the bill for want of prosecution.

COTTENHAM, C.  
LANGDALE, M. R.  
LANCELOT SHADWELL, V. C. E.

### TRANSFER OF MASTER LYNCH'S CAUSES.

April 21st, 1847.

WHEREAS Andrew Henry Lynch, Esq., one of the Masters of the High Court of Chancery, did on the 25th day of March last, resign his office as one of the Masters; and whereas it is expedient that provision should be made for the due dispatch of such causes and matters as stand referred to him; his Lordship doth order that all causes and matters which stand referred to the said Andrew Henry Lynch be transferred to John Edmund Dowdeswell, Esq., William Wingfield, Esq., James William Farrer, Esq., Sir Giffin Wilson, Knight, William Brougham, Esq., Naesau William Senior, Esq., Samuel Duckworth, Esq., Sir William Horne, Knight, Sir George Rose, Knight, and Richard Richards, Esq., some or one of them to be taken by them respectively, in such order as the senior Master of the said court shall direct. And his lordship doth further order, that the said Masters to whom such causes and matters shall respectively be assigned do proceed and act therein as the said Andrew Henry Lynch was to have done, and for that purpose all books, papers, deeds, writings, and accounts that concern the causes and other matters which formerly stood referred to the said Andrew Henry Lynch, shall be transferred to the said Masters respectively, to whom the said causes and matters shall be so assigned as aforesaid; and this order is to be drawn up and entered with the register of the said court.

COTTENHAM, C.

## HOUSE OF COMMONS COSTS.

## FEES ON TAXATION.

THE Speaker, on the 20th instant, laid on the table of the House the following proposed Table of Fees, on the Taxation of Costs on Private Bills, viz.

For every application or reference £ s. d.  
to "The Taxing Officer of the House of Commons" for the taxation of a bill of costs . . . . . 1 0 0

For every 100*l.* of any bill which shall be allowed by the taxing officer . . . . . 1 0 0

For every bill under 100*l.* . . . . 1 0 0  
On the deposit of every memorial complaining of a report of the taxing officer . . . . . 1 0 0

For every certificate which shall be signed by Mr. Speaker . . . . . 1 0 0

For copies of any documents in the office of the taxing officer, per folio of 72 words . . . . . 0 1 0

That the same fees be paid in case Mr. Speaker shall refer to the taxing officer any bill of costs, under the authority of an Act of the Sixth year of his late Majesty King George the Fourth, "To establish a Taxation of Costs on Private Bills in the House of Commons."

That the said fees be paid and applied in the same manner as the other fees which are charged at the House of Commons.

## LAW ASSOCIATION FOR THE BENEFIT OF THE WIDOWS AND FAMILIES OF PROFESSIONAL MEN.

THE following is the 30th Annual Report of the Directors of this excellent Society, which which was read to the Annual General Court held on the 11th May, at the Hall of the Incorporated Law Society. T. J. Burgoyne, Esq., in the Chair.

"This association has now been established 30 years, during which period a sum amounting to nearly 16,000*l.* has been appropriated to the families of members of the profession.

But while this large amount of relief has been afforded, the directors have been enabled to accumulate a fund of upwards of 20,000*l.*, thus placing the society upon such a footing of security, as to ensure the continuance of its benefits to those families of deceased members who may hereafter require assistance.

In addition to the income arising from stock, the annual subscriptions form an important item in the account. These have amounted in the past year to 589*l.* 1*s.*; and it is satisfactory to know that in every year since the first establishment of the association, the receipts have exceeded the expenditure.

Within the last few days the directors have received information of a bequest of 100*l.* to the funds of the association, by the late William

Tidd, Esq., the eminent author of the Book of Practice.

"Since the last report, one new case has come before the board, of a member of the society dying and leaving his family unprovided for. He had filled an important official situation, and it may be assumed that it had never come within his contemplations that his surviving family would derive any benefit from his subscription to the fund.

"Three new cases have during the year been added to the list of non-members' families receiving relief.

"The relief to this latter class of applicants has now been divided into two distinct branches—the casual, and the permanent; the first embracing cases where temporary assistance has appeared to be necessary; the latter including those which come before the directors annually for consideration.

"The permanent cases of this description are again divided into two classes—the one consisting of the families of those who have never been members; and the latter of those who having once been members had ceased to be so, possibly from inability to continue their subscription. A preference in the scale of allowance, is shown to the latter over those who have never subscribed at all.

"The cases now on the books of the association, and receiving relief during the past year, are as follow:

"Primary cases, consisting of those who are entitled to the full benefits of the association . . . . . 20

"Secondary, comprising the families of non-members, and to whom relief, when extended at all, is imparted in very different measure . . . . . 22

"The entire number of cases relieved since the year 1823, when relief was first granted by the association, has been . . . . . 117

"The directors cannot refer to the successful operations of the society during a period of 30 years, without at the same time recording their regret at the loss which the association has recently sustained in the death of the gentleman (the late Charles Murray, Esq.) in whom the design appears, from an early minute of its meetings, to have originated, who was one of the committee by whom its regulations were framed, and who officiated as its secretary for the first 17 years; and they remember with pleasure, that at the last general meeting of the association, 12 years after the termination of his official connexion with it, Mr. Murray attended, and, at his then advanced period of life, exhibited the same intelligence and solicitude for its well-being, which had characterized all his earlier exertions.

"In conclusion, the directors regret to state that the number of new members admitted during the year has been only five; a fact which proves how inadequately the advantages of the association are appreciated by the profession; and the directors must again appeal to the

members at large to make the society and its objects more extensively known among their professional brethren.

"(By order of the Board)

"JOHN MURRAY, Secretary."

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

We understand that this society is proceeding prosperously. In some counties nearly one-half the solicitors have joined it, and other districts are also well represented. In London many of the most eminent firms have sent in their adhesion, and new names are constantly arriving.

The Yorkshire Law Society, like that of Leeds, has come to resolutions approving of the objects of the association, and appointing a deputation to submit the address of the committee of management to the candidates at the ensuing general election for the several ridings of that important county, with a view to the consideration of the topics therein set forth, preparatory to the state of the profession being brought before parliament. As a substantial proof of cordial support, the Yorkshire Law Society has voted a donation of 25*l.* in aid of the funds of the association.

If the examples thus set be followed throughout the country, there can be no doubt that due attention will be given in the next session to the several grievances under which the profession labours. But no time should be lost in bringing the topics to the notice of the candidates. The time chosen for the formation of the new association has been most judiciously made, and we trust that the exertions of the committee will be seconded by the profession in general. Although a large number have subscribed their names, it is evidently important—towards giving all possible weight to the undertaking,—that the majority of the whole body should enrol themselves forthwith. Let there be no waiting for "the order of their coming, but come at once."

It may be again mentioned, that this association is designed to *unite the town and country solicitors*. Their interests are the same, and they should act together. Moreover, important objects are to be effected, not within the charter of the Incorporated Society, and some of the essential means of effecting those objects can be pursued only by individual association.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### Criminal Law.

#### ABORTION.

On the trial of an indictment on the statute 1 Vict. c. 85, for using an instrument with intent to procure the miscarriage of a woman, it is immaterial whether the woman was actually pregnant or not. *Reg. v. Goodchild*, 2 C. & K. 293.

#### ADMISSIONS.

See *Evidence*, 3.

#### ASSAULT.

*Abusing female child.*—*Semble*, that an indictment for carnally knowing and abusing a female child under the age of 10 years, which does not charge any assault, the prisoner cannot be convicted of an assault under the 11th section of the stat. 7 W. 4, and 1 Vict. c. 85. *Reg. v. Holcroft*, 2 C. & K. 341.

Case cited in the judgment: *Reg. v. M'Rue*, 8 C. & P. 641.

And see *Robbery*.

#### BANKRUPT.

*Not surrendering.*—*Venue.*—*Town corporate.*—The felony of not surrendering at a district court to a fiat in bankruptcy, under the stat. 5 & 6 Vict. c. 122, s. 32, is committed at the place where the district court is situate; and an indictment for this offence cannot be sustained in a different county in which the person was a trader, or in which he committed an act of bankruptcy.

The stat. 38 Geo. 3, c. 52, s. 2, which relates to the trial of offences in an adjoining county, only applies to cities and towns corporate which are counties of themselves, and not to towns corporate which are not counties of themselves. *Reg. v. Milner*, 2 C. & K. 310.

#### BATTERY.

*Beating a deer-keeper.*—Pulling a deer-keeper to the ground and holding him there while another person escapes, is not a *beating* of the deer-keeper within the stat. 7 & 8 G. 4, c. 29, s. 29. A mere *battery* is not sufficient to come within this enactment. There must be a *beating* in the popular sense of the word. *Reg. v. Hale*, 2 C. & K. 326.

#### \* BURGLARY.

*Dwelling-house.*—On the trial of an indictment for a burglary, it appeared that adjoining to the prosecutor's dwelling-house was a kiln, one end of which was supported by the end wall of the dwelling-house; and that adjoining to the kiln was a dairy, one end of which was supported by the end wall of the kiln. There was no external communication from the dwelling-house to the dairy, and the roofs of the dwelling-house, kiln, and dairy were of different heights: *Held*, that the dairy was not a part of the dwelling-house, and that a burglary could not be committed by breaking into it. *Reg. v. Higgs*, 2 C. & K. 322.

## CORONER.

See *Manslaughter*, 1.

## DEPOSITIONS.

1. *Mode of taking*.—It would be always desirable, when a person of weak intellect is examined before a magistrate in a case of felony, that the magistrate's clerk should take down in the depositions the questions put by the magistrate, and the answers given by the witness, as to the witness's capacity to take an oath. *Reg. v. Painter*, 2 C. & K. 319.

2. *Deceased witness*.—In order to make the depositions of a deceased witness admissible in evidence against a prisoner charged with a felony, such deposition need not have a separate caption. If there be a caption at the head of the body of the depositions taken in the case, that is sufficient. *Reg. v. Johnson*, 2 C. & K. 355.

3. *Mode of taking*.—On a charge of felony, the witnesses who make the depositions on which the prisoner is committed should be examined in the prisoner's presence, and he should hear all the questions put and answered; and if the magistrates' clerk, before the arrival of the magistrates and of the prisoner, examine the witnesses, and take down what they state, and when the magistrates and prisoner arrive the depositions so taken are read over to the witnesses in the presence of the magistrates and the prisoner, and the latter be asked whether he has any question to put to any of them, this is wrong. *Reg. v. Johnson*, 2 C. & K. 394.

## EMBEZZLEMENT.

1. *Brewer's drayman*.—A., a brewer, sent his drayman B. out with porter, with authority to sell it at fixed prices only. B. sold some of it to C. at an under price, and did not receive the money at the time. A. heard of this, and, unknown to B., told C. to pay B. the amount, which C. did, and B., when asked for it by A., denied the receipt of the money: *Held* to be sufficient evidence of embezzlement. *Reg. v. Aston*, 2 C. & K. 413.

2. *Treasurer to guardians under local poor act*.—*Appointment*.—*Stamp*.—The treasurer to the guardians of the poor of Birmingham, appointed under the stat. 1 & 2 W. 4, c. lxvii, (local and personal,) is a servant of the guardians, and as such is indictable for embezzlement.

The appointment in writing of a person to be such treasurer, at a yearly salary, requires a stamp.

But if such appointment be not receivable in evidence for want of a stamp, a recital in a bond executed by him is sufficient evidence of his appointment, and his duties may be shown from the clauses of the local act of parliament under which he is appointed. *Reg. v. Welsh*, 2 C. & K. 296.

## EVIDENCE.

1. *Proof of another felony*.—Although evidence offered in support of an indictment for felony be proof of another felony, that evidence

does not render it inadmissible if the evidence be otherwise receivable.

A. was indicted for wilfully setting fire to a rick, by firing a gun close to it, on the 29th of March: *Held*, that evidence that the rick was also on fire on the 28th of March, and that the prisoner was then close to it, having a gun in his hand, is receivable to show that the fire on the 29th was not accidental. *Reg. v. Dossett*, 2 C. & K. 306.

2. *Transcripts of parish registers*.—In ejectment, it being proved by the rector of the parish of C., that no parish registers existed there of earlier date than 1733, the transcripts of the registers of that parish for 1705 and 1706, returned under the 70th canon of 1603, were produced by the registrar of the diocese from the bishop's registry, and received as evidence of a marriage in 1705, and a baptism in 1706, of persons through whom the lessor of the plaintiff traced his title. *Doe d. Wood v. Wilkins*, 2 C. & K. 328.

3. *Admissions*.—On a trial for murder by poisoning, statements made by the deceased in conversation shortly before the time at which the poison is supposed to have been administered, are evidence to prove the state of his health at that time. *Reg. v. Johnson*, 2 C. & K. 354.

4. *Proof of sentence at assizes*.—The proper proof that a prisoner was in lawful custody under a sentence of imprisonment passed at the assizes, is by the proof of the record of his conviction; and neither the production of the calendar of the sentences, signed by the clerk of the assize, and by him delivered to the governor of the prison, nor the evidence of a person who heard sentence passed, is sufficient for this purpose. *Reg. v. Bourdon*, 2 C. & K. 366.

See *Depositions*; *False Imprisonment*.

## FALSE IMPRISONMENT.

*Justification*.—*Felony*.—*Suspicion*.—*Evidence*.—In an action for false imprisonment, the defendant pleaded that his goods had been stolen, and having cause to suspect the plaintiff of the felony, he gave her into custody, the plea stating several grounds of suspicion. The plaintiff called a policeman to prove that the defendant directed him to take the plaintiff into custody; and in his cross-examination the policeman said, that at the same time, and in the presence of the plaintiff, the defendant stated that the goods had been stolen, and also stated some of the grounds of suspicion mentioned in the plea: *Held*, that this was evidence for the jury to consider, and upon which they might find, that the felony had been committed; and that the defendant had good cause to suspect the plaintiff, if this evidence satisfied them that the facts really were so.

*Held* also, that although in this plea the defendant ought to set out his grounds of suspicion, yet that he would be entitled to a verdict without proof of the whole of them, if he proved that a felony was in fact committed, and proved so much of the grounds of suspicion as

satisfied the jury that he had reasonable cause to suspect the plaintiff. *Williams v. Credwell*, 2 C. & K. 422.

#### FORGERY.

1. *Certificate of a pretended marriage, uttering.*—If A. gives to B. a forged certificate of a pretended marriage between himself and B., in order that B. may give it to a third party, A. is not guilty of an "uttering" within the 11 G. 4, and W. 4, c. 66, s. 20. *Reg. v. Heywood*, 2 C. & K. 352.

2. *Intent to defraud.*—In a case of forgery it is not required, in order to constitute, in point of law, an intent to defraud, that the party committing the offence should have had present in his mind an intention to defraud a particular person, if the consequences of his act would necessarily or possibly be to defraud any person; but there must, at all events, be a possibility of some person being defrauded by the forgery.

A. was indicted for forging and uttering a deed of transfer of 10 shares in the London and Croydon Railway Company, with three intents, viz., to defraud that company, D. L., and W. B. It appeared that in July, 1845, E. R. transferred, by two deeds of transfer, 100 shares in this company to D. L., and that these deeds purported to be executed by D. L. as transferee; but the signatures D. L. were, in fact, written by A., without the authority or knowledge of D. L. On the 2nd of Aug. 1845, by seven deeds of transfer, which purported to be executed by D. L. as transferor, these shares were transferred to five different persons, and by one of them ten of the shares purported to be transferred to W. B. The name of D. L. was signed to all these deeds by A., without the authority or knowledge of D. L. On these seven transfers there was a profit, which D. L. refused to receive from A., and it did not appear that any further call on these shares could be made. *Held*, that on these facts, A. was entitled to be acquitted, as neither the company, nor D. L., nor W. B. could be defrauded. *Reg. v. Marcus*, 2 C. & K. 356.

3. *Undertaking for payment of money.*—A forged instrument, by which the supposed makers of it, in consideration of goods to be sold to R. P., undertakes to guarantee to the vendor the due payment for all such goods so to be sold to R. P., but so that the supposed maker should not be liable beyond 10*l.*, is a forged undertaking for the payment of money within the stat. 1 W. 4, c. 66, s. 3. *Reg. v. Stone*, 2 C. & K. 264.

4. *Pretended authority to indorse per procuration.*—E. W. came to a banking house, and asked to have a bill discounted, stating that he came from Mr. Tomlinson, (who was known to the banker's clerk); and on one of the bankers saying that Mr. Tomlinson had not indorsed the bill, E. W. said that he would indorse it for him. The banker then wrote on the back of the bill, "Per procuration, Thomas Tomlinson," and the prisoner signed his own name, E. W., to it. *Held*, not to be a forgery. *Reg. v. White*, 2 C. & K. 404.

#### HIGHWAY.

*Plea of guilty.*—*Costs.*—If an indictment be preferred against the inhabitants of a parish under the Highway Act, 5 & 6 W. 4, c. 50, s. 95, and the defendants plead guilty, the judge will not direct the prosecutor's costs to be paid under that section, as the indictment was not tried before him. *Reg. v. Inhabitants of Vouchurch*, 2 C. & K. 393.

#### JURISDICTION.

See *Bankrupt*; *Manslaughter*, 1.

#### LARCENY.

1. *Poor's box.*—*Property.*—Money was stolen from an ancient poor's box fixed up in a church. *Held*, that in an indictment for stealing it, the property would be properly laid in the vicar and churchwardens, and that an indictment in which the property was stated to be that of "J. N. and others," J. N. being the vicar, was correct, without alleging "J. N." to be the vicar, or the "others" to be the churchwardens. *Reg. v. Wortley*, 2 C. & K. 283.

2. *Servant.*—Where a servant received money from his master in order to pay the wages of certain work-people therewith, and in the book in which the account of the money so paid was kept by the servant, entries were found charging the master with more money than the servant had actually disbursed, but there was no proof that he had ever delivered this account to the master: *Held*, that this did not amount to larceny in the servant. *Reg. v. Butler*, 2 C. & K. 310.

3. *Principal.*—J. had employed M. to load sacks of oats, the property of J., from a vessel on to the trams of K., who was to convey them on the trams to the warehouse of J. By previous concert between M. and K. oats were taken by M. from two of the sacks and put into a nose-bag in the absence of K., and hidden under a tram. K. returned in a few minutes and took the nose-bag and its contents from under the tram and took them away, M. being then within 3 or 4 yards of him: *Held*, that both were principals in the larceny, and that K. was not a receiver; and that, as it was all one transaction, and both had concurred in it, and both had been present at some parts of the transaction, both could be convicted as principals in the larceny. *Reg. v. Kelly*, 2 C. & K. 379.

4. *Taking.*—*Felonious intent.*—S. delivered two 5*l.* notes to Mrs. D., the wife of the post-master of C., at which post-office orders were not granted, and asked her to send them by G., the letter-carrier from C. to W., in order that he might get two 5*l.* money orders at the W. post-office. Mrs. D. gave these instructions to G., and put the notes by his desire into his bag. G. afterwards took the notes out of the bag, and pretended when he got to the W. post-office that he had lost them. It was found by the jury that G. had no intention to steal the notes when they were given to him by Mrs. D. *Held*, by the 15 judges, that this taking of the notes by G. was not a larceny, the notes

not being in his possession in the course of his duty as a post-office servant. *Reg. v. Glass*, 2 C. & K. 395.

5. *Servant of the post-office.*—The president of a department in the post-office put a half-sovereign into a letter, on which he wrote a fictitious address, and dropped the letter with the money in it into the letter-box of a post-office receiving house where the prisoner was employed in the service of the post-office. The prisoner stole the letter and money : *Held*, that this was a stealing of a "post letter" containing money within the stat. 1 Vict. c. 36, s. 26, and that this was not the less a "post letter" within that enactment because it had a fictitious address. *Reg. v. Young*, 2 C. & K. 466.

#### LIBEL.

1. *Privileged communication.*—*Church discipline act.*—A letter written to a bishop, informing him of a report current in a parish of his diocese, that the incumbent of a district in that parish had collared the schoolmaster, and that a fight ensued between them, is a privileged communication if such letter was written to the bishop honestly, to call his attention to a rumour in the parish which was bringing scandal on the church, and not from any malicious motive; and it is not material that the writer of the letter did not live in the district, to the incumbent of which the letter refers. *James v. Boston*, 2 C. & K. 4.

See *Lake v. King*, 1 Wms. Saund. 130; *Gathercole v. M'jall*, Exch. 21 Apl. 1846.

2. *Queen's counsel.*—*License to plead.*—On the trial of a criminal information, a Queen's Counsel ought not to be of counsel for the defendant without a license from the Queen, or at the least a letter from the Secretary of State; and it is not enough that an application for a license has been sent to the Secretary of State from an assize town in the country, to which no answer has been received at the time of the case being tried. *Reg. v. Bartlett*, 2 C. & K. 321.

#### MANSLAUGHTER.

1. *Negligence.*—*Ventilation of a mine.*—Where an engineer, who had charge of an engine which was worked for the purpose of keeping up a supply of pure air in a mine neglected his duty, so that the engine stopped and the mine thereby became charged with foul air, which afterwards exploded and caused the death of one of the miners : *Held*, that in such a case the engineer could not be convicted of manslaughter on an indictment which did not allege a duty in him which he had neglected to perform. *Reg. v. Barrett*, 2 C. & K. 343.

2. *Negligence.*—*Ventilation of a mine.*—If it be the duty of a person, as ground bailiff of a mine, to cause the mine to be properly ventilated by causing air-headings to be put up where necessary, and by reason of his omission in this respect another be killed by an explosion of the mine, such person is guilty of manslaughter; if, by such omission, he was guilty of a want of ordinary and reasonable precau-

tion; and if it was his plain and ordinary duty to have caused an air-heading to have been made, and a man using reasonable diligence would have done it. It is no defence in a case of manslaughter that the death of the deceased was caused by the negligence of others, as well as by that of the prisoner; for, if the death of a deceased be caused partly by the negligence of the prisoner, and partly by the negligence of others, the prisoner and all those others are guilty of manslaughter. *Reg. v. Haines*, 2 C. & K. 368.

3. *Jurisdiction of coroner.*—*Inquisition.*—In a case of manslaughter, the cause of the death, and the death occurred in the county of S., and the body was removed to the city of L.; the coroner of L. held the inquest, and J. E. was tried for the manslaughter on the inquisition : *Semble*, that the inquest was properly held under the stat. 6 & 7 Vict. c. 12, although that statute is a little obscurely worded. *Reg. v. Ellis*, 2 C. & K. 470.

4. *Indictment.*—An indictment against a medical practitioner charged that he made divers assaults on the deceased, (a patient,) and applied wet cloths to his body, and caused him to be put into baths : *Held*, that this was a proper mode of laying the offence, although all that was done was by the consent of the deceased; and that an indictment need not charge an undertaking to perform a cure, and a felonious breach of duty. *Reg. v. Ellis*, 2 C. & K. 470.

5. *Indictment.*—An indictment for manslaughter charged, that J. E. caused R. D. to become mortally sick, of which mortal sickness, especially of a mortal congestion of the lungs and heart, occasioned by the means aforesaid, he died : *Held*, that this properly charged a death from a mortal congestion caused by those means. *Reg. v. Ellis*, 2 C. & K. 470.

#### MURDER.

*Indictment.*—*Verdict.*—Two prisoners were indicted for murder. The 1st count of the indictment charged, that P. D. and C. P., on, &c., at, &c., in and upon one W. C., did make an assault, and that P. D. with a gun shot W. C., giving him a mortal wound, &c., of which he died, and that C. P. was feloniously present aiding and abetting; and so the jurors, &c., do say, that the said P. D. and C. P. feloniously, &c., did murder W. C. The 2nd count charged, that both the prisoners "afterwards, to wit, upon the same day, in the year aforesaid, with force and arms, at the parish aforesaid, in and upon the said W. C. did make an assault," and that C. P. with a gun shot W. C., giving him a mortal wound of which he died; and so, &c. P. D. and C. P. did murder the said W. C. The jury found both the prisoners guilty, but were not satisfied which fired the gun : *Held*, that the conviction was right; and that as each count was good, and the same evidence would support either count, it was not essential that the jury should find which of the prisoners fired the gun. *Reg. v. Downing*, 2 C. & K. 382.



## NUISANCE.

**Landlord.—Local act.**—In an action on the case for a nuisance arising from the smoke issuing from buildings in the occupation of weekly tenants, *Held*, that the action was rightly brought against the lessor; and 2ndly, that the entering of smoke discharged from defendant's chimnies into plaintiff's house amounted in contemplation of law to a nuisance, but that the fact of all buildings erected on the locality on which defendant's were being declared common nuisances by statute, was not *per se* sufficient to entitle plaintiff to a verdict in a civil action in which the nuisance complained of arose from the smoke. *Rich v. Basterfield*, 2 C. & K. 257.

## PARDON.

**Different felony.**—A. was, at the Spring Assizes of 1846, indicted for stealing a horse on the 26th day of Feb., 1841. He had, in 1841, been convicted of felony and sent to the hulks, from which he was discharged in Feb., 1846. He produced a certificate of his discharge, which stated, that "J. H., who was convicted at Worcester, on the 22nd of June, 1842, is this day discharged, in consequence of having received a free pardon." *Held*, that if this pardon had been regularly proved, it would have been no bar to the charge of horse stealing, as the pardon was expressly confined to another felony. *Reg. v. Harrod*, 2 C. & K. 294.

## POACHING.

**Night.—Commencement of prosecution.**—In a case of night poaching by persons armed, the offence was committed on the 4th of Dec., 1845. On the 19th Dec., 1845, information of the offence was made before a magistrate, who on that day granted warrants to apprehend A. and B., two of the offenders. On one of these warrants A. was apprehended, and committed for trial on the 16th Sept., 1846, B. being apprehended on the other warrant and committed for trial on the 21st Oct., 1846. The indictment was preferred and found on the 5th April, 1847. *Held*, that the prosecution was "commenced within twelve calendar months after the commission" of the offence, and that it was commenced by the information and warrants to apprehend, or, at all events, by the apprehension of the prisoners. *Reg. v. Brooks*, 2 C. & K. 402.

## PRINCIPAL.

See *Larceny*, 3.

## ROBBERY.

**Assault.**—If, on the trial of an indictment for a robbery with violence, the robbery be not proved, the prisoner cannot be found guilty of the assault only, (under 7 W. 4, and 1 Vict. c. 85, s. 11,) unless it appear that such assault was committed in the progress of something which, when completed, would be, and with intent to commit, a felony. *Reg. v. Greenwood*, 2 C. & K. 339.

## THREATENING LETTER.

**Indictment.**—An indictment on the stat. 4 G. 4, c. 54, s. 3, charged that the prisoner sent a letter to T. L., threatening to burn the house of J. R.: *Held*, bad, as the threat must be to the owner of the property; and that if the letter was sent to T. L., with intent that it should reach J. R., and did reach him, it should have been charged in the indictment as sent to J. R. *Reg. v. Jones*, 2 C. & K. 398.

## TRIAL.

**Postponing.—Evidence.**—An application to postpone the trial of a prisoner charged with murder, in order to afford an opportunity of investigating the evidence and characters of certain witnesses who had not been examined before the committing magistrate, but who were called for the prosecution, to prove previous attempts by the accused on the life of the deceased, was refused. *Reg. v. Johnson*, 2 C. & K. 354.

## VENUE.

See *Bankrupt*.

## VIEW.

**When allowed in a case of felony.**—Where, on the trial of a case of rape, it was wished on the part of the prisoner, that the jury should see the place at which the offence was said to have been committed, and the place was so near to the court that the jury could have a view without inconvenience, the judge allowed a view, although the prosecutor did not consent to it. *Reg. v. Whalley*, 2 C. & K. 376.

## WITNESS.

**Co-defendant who has pleaded guilty.**—A. B., and C., were jointly indicted, A. B. for stealing tea, and C. for receiving it *scienter*, &c. A. and C. pleaded not guilty, and B. pleaded guilty; and the trial proceeded against A. and C., no judgment having been pronounced against B.: *Held*, that B. was a competent witness for the prosecution on the trial of A. and C. *Reg. v. Hinks*, 2 C. & K. 462.

See *Depositions*; *Evidence*.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

## House of Lords.

*Irving v. Manning*. July 8, 1847.

## INSURANCE OF SHIP.—VALUED POLICY.

THE following is the opinion delivered by the judges on the question of law propounded to them in this case by the House of Lords:—

\* The following judges were also present:—Mr. Baron Parke; Mr. Baron Alderson; Mr. Justice Coleridge; Mr. Justice Coltman; Mr. Justice Maule; Mr. Baron Rolfe; Mr. Justice Wightman; Mr. Justice Cresswell; Mr. Justice Erle; Mr. Baron Platt; and Mr. Justice Vaughan Williams.



Mr. Justice Patteson.—Your lordships have been pleased to put the following question to her Majesty's judges:

"Whether, in the judgment upon the special verdict in this case, the damages ought to be taken on property assessed at 3,000*l.* or 1,500*l.*?"

I am desired by the judges, who heard the whole of the argument at your lordships' bar, to give their answer to this question, and to state their opinion that the plaintiff below was entitled to recover, upon the facts found by the special verdict, the sum of 3,000*l.*

Upon the record it appears that the action was on a policy for 3,000*l.* on a ship valued at 17,500*l.* The other facts found by the special verdict show, that it was fairly valued at that sum, and indeed it would be assumed that it was so, unless fraud were pleaded and proved; and then it is found that the vessel during the voyage was so damaged as to be incompetent to proceed without repairs; that the necessary expenditure, in order to repair the vessel and make her seaworthy, would have amounted to 10,500*l.*, and that the ship would have been then worth 9,000*l.* only, which was her marketable value then and at the time of the policy; that a prudent owner, uninsured, would not have repaired the vessel; and that the vessel was duly abandoned to the underwriters.

If this had not been the case of a valued policy it is clear that on the facts found there was a total loss; for a vessel is totally lost within the meaning of a policy when it becomes of no use or value as a ship to the owner, and as much so as if the vessel had gone to the bottom of the sea, or had been broken to pieces, and the whole or great part of the fragments had reached the shore as wreck; and the course has been in all cases in modern times to consider the loss as total where a prudent owner, uninsured, would not have repaired.

In an open policy, therefore, the assured would have been entitled to recover for a total loss, the amount to be ascertained by evidence.

What difference then is there from the circumstance that the policy is a valued policy?

By the terms of it, the ship, &c., for so much as concerns the assured, by agreement between the assured and assurers, are and shall be rated and valued at 17,500*l.*, and the question turns upon the meaning of these words.

Do they, as contended for by the plaintiff in error, amount to an agreement, that for all purposes connected with the voyage, at least for the purpose of ascertaining whether there is a total loss or not, the ship should be taken to be of that value, so that when a question arises whether it would be worth while to repair it must be assumed that the vessel would be worth that sum when repaired?

Or do they mean only, that for the purpose of ascertaining the amount of compensation to be paid to the assured, when the loss has happened, the value shall be taken to be the sum fixed, in order to avoid disputes as to the quantum of the assured's interest?

We are all of opinion that the latter is the true meaning; and this is consistent with the language of the policy, and with every case that has been decided upon valued policies.

In the case of *Lewis v. Rucker*, 2 Burrows, 1167, on a valued policy on goods, the amount to which the underwriter was held liable for a partial loss was ascertained by computing such a proportion of the value in the policy as the difference between the price which sound goods would have sold for at the port of delivery and that for which the damaged goods sold bore to the price for which sound goods would have sold. So that in estimating the extent of the loss,—that is, in determining whether it were a loss to the extent of one-half, one-third, or to any other extent—the value in the policy was wholly disregarded, and nothing was considered but the state of the goods as ascertained by their selling prices. If sound goods would have brought double the price of the damaged, the loss was one-half, or 50 per cent., whatever the value in the policy might be. But the extent and nature of the loss being ascertained by this comparison, the underwriter was held liable to pay the proportion so ascertained of the value in the policy; and this mode of treating partial losses on goods is always adhered to. Now the question whether a loss be total or partial is a question of the same nature as the question, what is the extent of a partial loss? and there is the same reason in both cases for excluding the consideration of the value in the policy from the inquiry as to the extent of the loss, and for treating that value as binding on the question of how much the subject so totally or partially lost was worth; so that the mode of determining the question, whether the loss were total or not, which has been adopted in this case, agrees, in so far as it excludes the consideration of the value in the policy, with that in which the inquiry into the extent of a partial loss on goods is always conducted; and such has been the construction put upon valued policies in the cases which are questioned in this writ of error, *Allen v. Sugrue*, 8 Barn. & Cres. 561; *Young v. Turing*, 2 Man. & G. 593; *Egginton v. Lawson*, 1832; *Herne v. Hay*, 1842, cited by Sir F. Thesiger. Those cases have now been considered for many years as having settled the law, and have been the basis on which contracts without number have been formed, and they ought not on slight grounds to be departed from. The principle laid down in these latter cases is this: That the question of loss, whether total or not, is to be determined just as if there was no policy at all; and the established mode of putting the question, when it is alleged that there has been what is perhaps improperly called a constructive total loss of a ship, is to consider the policy altogether out of the question, and to inquire what a prudent uninsured owner would have done in the state in which the vessel was placed by the perils insured against.

If he would not have repaired the vessel, it is deemed to be lost.

When this test has been applied and the

nature of the loss has been thus determined, the quantum of compensation is then to be fixed.

In an open policy, the compensation must be then ascertained by evidence.

In a valued one, the agreed total value is conclusive; each party has conclusively admitted that this fixed sum shall be that which the assured is entitled to receive in case of a total loss.

It is argued that this course of proceeding infringes on the generally received rule, that an insurance is a mere contract of indemnity, for thus the assured may obtain more than a compensation for his loss; and it is so.

A policy of insurance is not a perfect contract of indemnity. It must be taken with this qualification, that the parties may agree beforehand in estimating the value of the subject assured, by way of liquidated damages, as indeed they may in any other contract to indemnify.

### Lord Chancellor.

*Lewis v. Damer.* June 4th, 1847.

#### COSTS OF PROCEEDING IN ONE OF TWO SUITS AFTER NOTICE OF DECREE IN THE OTHER.

*If the decree in one of two suits will effect the object of the other, the proceedings in the latter may be stayed, but the party moving is not entitled to his costs from the party restrained, and who has notice merely of the decree.*

Mr. *Kenyon Parker*, with whom was Mr. *Holt*, moved to discharge or vary the order of the Vice-Chancellor of England directing the plaintiff to stay proceedings in his suit until further order, and to pay the costs of the application to stay proceedings. Two bills had been filed, the first by Lord Portarlington, as residuary legatee, against Colonel Damer, the executor of the late Lord Portarlington; and the second against the same defendant in the same capacity, by Lewis, a specialty creditor. Publication in both suits passed on the same day, viz., on the 30th of April last, and Lewis proceeded to set down his cause for hearing. A decree having been obtained in the first cause, the defendant gave notice of it to Lewis, who, notwithstanding, continued his proceedings, and consequently the defendant obtained the order which was now appealed against. The learned counsel contended that Lewis would not be so much benefited by a decree in the first, as he would be by one in the second cause, and they complained of his being compelled to pay the costs of the defendant, who made the application, and of those other defendants who had been served with notice and had appeared at the hearing of it. *Budgen v. Sage*, 3 Myl. & Cr. 683.

Mr. *Stuart*, Mr. *J. Parker*, and Mr. *Follett*, maintained that the decree in the first cause would effect the object of the second suit, and argued, that as the plaintiff in the latter had

persisted in its prosecution after notice of the decree in the former, he was properly ordered to pay the costs of the application to stay such proceedings; and although no case went the length of ordering such party to pay costs, there were several in which he had been refused them. *Curry v. Bowyer*, 3 Madd. 456; *Anon.* 2 Sim. & St. 424; *Jackson v. Leaf*, 1 Jac. & W. 229; *Clarke v. Lord Ormond*, Jac. 108; *Pott v. Gallini*, 1 Sim. & St. 206; *Terrewest v. Featherby*, *Brook v. Skinner*, and *Dyer v. Kearsley*, 2 Mer. pp. 480, 481, and 482; *Martin v. Martin*, 1 Ves. 211; and *Brooks v. Reynolds*, 1 Bro. C. C. 183, quoted in Daniel's Chancery Practice, 2nd ed. p. 1488.

Mr. *Collins* appeared for a trustee.

The Lord Chancellor, without hearing the termination of Mr. *K. Parker's* reply, remarked, that no authority had been shown in which a party having merely a notice of a decree in another suit, but persisting in proceeding with his own suit had been ordered to pay the costs of an application by the other side to restrain such proceedings. The cases merely extended to the refusing him his own costs. Besides, in this instance, Col. Damer had not applied in his character of defendant in the second suit, but as defendant in the first, and had thereby made it necessary to serve all the other defendants in that suit with notice, and thus entailed the expense of more than one set of costs. His lordship had not been convinced that the decree which had been obtained in the first suit would not effect the object of the plaintiff in the second, and therefore he was not entitled to receive the costs of the application to restrain him from going on with it, and to this extent the order appealed against must be varied.

### Rolls Court.

*Hulme v. Chitty.* June 19, 1847.

#### DECREE.—EXECUTORS.—PARTNERS.

*The court will, on motion, introduce into a decree a direction, that monies ordered to be paid to executors shall be paid to "them or either of them," but not a direction that monies ordered to be paid to a solicitor shall be paid to his surviving partner.*

Mr. *Robson* applied, that a decree which directed a certain sum to be paid to two executors might be varied, by directing the sum to be paid to them or either of them, one of them being dead; to which Lord *Langdale* assented. He then asked that the decree might be further varied, by directing a sum of money to be paid to the surviving partner of a solicitor, to whom the decree directed payment to be made, who was also dead. But this Lord *Langdale* refused to do.

He said, that in the case of executors the right survived, but this was a new claim. It must be dealt with as an order arising out of a supplemental fact. He however would make an order, with the consent of the surviving partner, that the money should be paid to the

executors of the deceased partner, but it must be a substantive order, and as his lordship intimated, should be made on petition.

**Vice-Chancellor of England.**

*Corporation of Liverpool v. Morris.* May 1st, 1847.

**INJUNCTION.—ANSWER.—AFFIDAVIT.**

*On a motion on filing of answer to dissolve an injunction, Held, that an affidavit to prove the identity of a model filed since the answer could not be admitted.*

In this case an *ex parte* injunction had been obtained, and the defendant now made a motion, on the filing his answer, to dissolve it.

Mr. Stuart and Mr. W. M. James proposed to read an affidavit to identify certain models referred to in the answer, the affidavit having been filed since the answer.

Mr. Bethell, *contra*, objected to the admission of the affidavit, and cited *Barwell v. Brooks*, 7 Jur. 364.

The Vice-Chancellor said, that if the answer had been so framed that the court must necessarily infer that that is the same model which is mentioned in the answer, he might have looked at the model for the purposes of the motion, but it appeared that that could not be satisfactorily explained, except by having recourse to other evidence than the answer, and recourse had been had for that purpose to an affidavit, but he was clearly of opinion that such affidavit could not be received.

*Lowell v. Andrew.* May 8th, 1847.

**ANSWER.—IMPERTINENCE.**

*An answer cannot be referred for impertinence after an objection for want of parties raised by it has been set down to be argued by plaintiff.*

In this case an order had been obtained at the Rolls by plaintiff for referring the answer for impertinence. On the 28th April plaintiff set down the cause to be heard on the objection for want of parties. On the 30th April plaintiff filed exceptions to the answer for impertinence, and on 1st of May obtained an order of reference at the Rolls. On the 4th May the objections were allowed.

Mr. Bethell and Mr. Terrell now applied on behalf of the defendant to have the order discharged with costs.

Mr. Bilton, *contra*, objected that the court had no jurisdiction to entertain the motion, and cited the 6th Order of May 9th, 1839, and the cases of *Hooper v. Power*, 6 Beav. 173, and *St. Victor v. Devereux*, 6 Beav. 584.

The Vice-Chancellor said, that although the objection was set down to be argued upon the facts stated in the bill, yet that objection could only be considered with regard to what was stated upon the answer. Plaintiff at one moment said that the record could not stand as it

was, and at the next asked that a question might be decided upon it as it stood. His lordship's opinion that after the steps the plaintiff had taken he had no right to obtain the order. *Ex parte* Motion granted.

*Evans v. Crosbie.* June 23, 1847.

**CONSTRUCTION OF WILL.—LEGACIES CHARGED ON REAL ESTATE.—RESIDUARY LEGATEE.**

*On the construction of a will, Held, that certain legacies were charged on real estate, and that by the words, "I leave and bequeath to D. C. the sum of 2000l., and also to be my residuary legatee," it was intended that D. C. should take all the testator's residuary real estate.*

M. CURRIE, by his will dated Feb. 27, 1834, gave all his real and personal estate in possession, reversion, expectancy or remainder, whatsoever situated in England, (except as therein mentioned,) to D. Currie, and M. D. Currie, their executors, administrators and assigns, upon trust, that they, or the survivors of them, or the heirs or assigns of such survivor should, as soon as convenient after his death, out of his personal estate, or by sale, mortgage, or other disposition of his real estates, or any part thereof, pay a legacy of 1,500l. to Flora Crosbie, his sister, as therein mentioned. The will then proceeded,—“I leave and bequeath unto J. Currie the sum of 1,000l., to be laid out at eligible security, and the interest to be paid to him during his life, and at his demise, the said sum to be divided amongst his surviving children, giving his son M. Currie, 100l. towards completing his medical education. I leave and bequeath unto my brother D. Currie the sum of 2,000l., and also to be my residuary legatee. I bequeath to my paternal sister, C. Currie, the sum of 200l. for her own absolute use and benefit, and I do hereby appoint my said trustees to be executors of this my will and testament. The questions raised were, whether the legacies given by the will were chargeable on the real estate, and whether D. Currie took the real estate not otherwise disposed of, under the words “residuary legatee.”

Mr. Stuart and Mr. Shapter, for the plaintiffs, urged, that as assignees of the testator's heir-at-law, they were entitled to the undisposed of real estate.

Mr. Bethell, Mr. Hetherington, and Mr. Pearson, for the representative of D. Currie, contended, that the words “residuary legatee” carried the residuary real estate, and that the word “legatee” meant “devisee,” citing *Hope v. Taylor*, 1 Burr. 268; *Pitman v. Stevens*, 75 East, 505; *Hurdacre v. Nash*, 5 T. R. 716; *Davenport v. Collman*, 9 Mees. & W. 481; 12 Sim. 588.

Mr. Stuart, in reply, urged that there was no absolute conversion, the trustees had power to raise the legacy by mortgage *mon* without sale. That there was nothing in will showing an intention to charge the legacies on the land. Neither was there anything to

show that the testator meant devise by the word legatee, as there was in the case of *Devonport v. Colman*, and the other cases cited.

The Vice-Chancellor said, that many of the cases cited were valuable as giving the different meanings which had been put on the word "legatee," and that there were many instances in which that word had reference to, and had been held applicable to, real estate. It was evident that the testator was a person very deficient in legal learning, and had used the term legatee as applicable as well to a person taking land as to one who was to take personalty. He was, however, of opinion that upon the natural construction of the whole will, the testator meant his brothers and sisters to take all their legacies as chargeable on the real estate, and that D. Currie was only intended to take after payment of all the others, but then to take everything, whether real or personal. It was not reasonable to cut down the word residuary because it happened to be joined with the word legatee.

#### Queen's Bench.

(Before the Four Judges.)

*Woolmer and others v. Toby.* Trinity Term, 1847.

#### RAILWAY SHARES.—ACTION FOR DEPOSITS.

*A. applied to the provisional directors of a railway company for an allotment of shares, and 40 were afterwards allotted to him. Between the time of the application for shares and the letter of allotment several names had been withdrawn from the provisional committee and additional names had been added. A managing committee was appointed from among the provisional directors, and by them an action was commenced to recover from A. the amount of the deposits to be paid on the shares allotted to him.*

*Held, that inasmuch as the shares were not allotted to A. by the persons to whom the application for shares was made, the evidence failed to support the contract alleged in the declaration, and the plaintiffs were nonsuited.*

THIS was an action brought by the committee of management of the Exeter, Plymouth, and Devonport Railway against the defendant for the deposits upon 40 shares allotted to him in the proposed railway. The sum of 2l. 12s. 6d. was to be paid on each share. A prospectus was issued by the company, on the 14th of September, 1845, for a railway to be made called the direct Exeter, Plymouth, and Devonport railway, capital one million, in 40,000 shares. On the 13th of October an application was made by the defendant for an allotment of shares. On the 15th of December, 40 shares were allotted to the defendant, the deposits upon which were to be paid on or before the 20th of December, and on the 30th of December the scheme was abandoned. The application for

shares was made to the provisional directors, and the action was brought by the managing committee. The plaintiffs only issued 36,400 shares. The letter of application and the letter of allotment constituted the agreement declared upon. The case was tried on the Western Circuit, before Mr. Baron Rolfe, and a verdict was found for the plaintiffs for 105l. The learned judge was of opinion that the allotment of shares had taken place within a reasonable time after the application, but that question was left for the consideration of the jury. It appeared in the evidence that a change had taken place in the persons forming the provisional committee between the 13th of October and the 15th of December, that some names had been withdrawn and others substituted in their place.

A rule nisi was obtained in Easter Term to enter a nonsuit, on the ground that the plaintiffs, the managing committee, were not the parties with whom the defendant contracted. The rule was also granted to arrest the judgment, or for a new trial, but upon these points the court did not give any judgment.

Mr. Crowder and Mr. Greenwood showed cause.

Mr. Serjeant Kinglake and Mr. M. Smith, contra. The contract was made with the provisional directors, and between the time when the application for shares was made and the letter of allotment, several names had been withdrawn from the committee and others added. The parties, therefore, with whom the contract was made were not the parties who bring the action. *Piggott v. Thompson.*<sup>b</sup>

Lord Denman, C. J., now delivered the judgment of the court. He said that one of the many points raised in this case would be sufficient to determine it. At the trial of the cause a prospectus was produced, containing the names of certain persons who were described as forming the provisional committee. Some of the same persons were described as the committee of management. After the issuing of the prospectus, the defendant sent a letter to the committee applying for the allotment of a certain number of shares. That letter contained the usual promise to pay the deposit on the shares that might be allotted to him. That letter and the answer to it were relied on as constituting a complete contract, by which the defendant expressly undertook to pay the money now sought to be recovered from him. The evidence, however, showed that in the interval between the day of the application and that of the allotment there had been a change in the constitution of the provisional committee by the retirement of certain individuals originally numbered among its members. The defendant therefore contended, that as the application for railway shares was much influenced by the knowledge which each applicant had of the character and responsibility of the gentlemen forming the committee, he was not bound to accept the shares merely because he had ap-

plied for them, but was entitled to a notification of the change so that he might reconsider his application, and determine whether, after the withdrawal of gentlemen in whom he might place particular confidence, he still desired to obtain shares in the railway. The court was of opinion that the objection arising out of the change of committee-men must prevail, because the simple fact of the change showed that the persons who received and answered the letter were not those who subsequently allotted the shares; in other words, that the persons who attempted to enforce the contract were not those with whom the contract was made. That being so, the defendant was entitled to a nonsuit. There were other objections to the verdict, which, if allowed, would entitle the defendant to a new trial; but as this objection entitled the defendant to enter a nonsuit, it was unnecessary to discuss those objections which would only call for a new trial. The rule for a nonsuit must be absolute.

Rule absolute to enter a nonsuit.

### Exchequer.

*Washbourne v. Burrows.* Trinity Term,  
May 28, and June 12, 1847.

USURY.—INTEREST IN LAND.—REPLICATION “DE INJURIA.”—PLEADINGS.

To an action of covenant for payment of 250*l.* and interest, the defendant pleaded that the covenant was entered into in pursuance of an usurious contract to pay more than 5*l.* per cent. interest, and that payment was secured by a deed whereby the defendant bargained and sold to the plaintiff the crops of grass growing on certain land. To this plea the plaintiff replied that the contract was entered into after the passing of the 2 & 3 Vict. c. 37. On demurrer to the replication, *Held*, that the plea did not show that the money was secured on an interest in land, inasmuch as the crops of grass might have been sold to the defendant by the owner of the soil on the terms that they were to be cut by him and delivered to the defendant as a personal chattel.

*Held*, also, that in a plea of usury it is sufficient for the defendant to allege that the contract is void under the stat. 2, 12 Anne, c. 16. s. 1; and the plaintiff, in order to take the case out of that statute, must reply that the contract was made after the 2 & 3 Vict. c. 37, and does not relate to land.

*Held*, also, that *de injuria* is a good replication to a plea of fraud in an action of covenant.

THIS was an action of covenant on a deed, whereby the defendant covenanted to pay the plaintiff 250*l.* and interest.

The defendant pleaded, (amongst other pleas,) thirdly, that the covenant was entered into in pursuance of a usurious contract, by which the defendant agreed to pay more than 5*l.* per cent. by way of interest, and that the

payment was secured by a deed, whereby the defendant bargained, and sold to the plaintiff by way of security, certain personal chattels, and also the crops of grass then growing on certain lands mentioned in the plea, whereby, or by force of the 12 Anne, c. 16, s. 1, stat. 2, the covenant became and was wholly void in law.

4thly, A general plea of fraud.

To the third plea the plaintiff replied, that the contract was entered into after passing of the statute 2 & 3 Vict. c. 37. To this replication the defendant demurred generally.

To the fourth plea the plaintiff replied “*de injuria*,” and to this replication the defendant demurred specially, on the ground that the general replication “*de injuria*” was inapplicable to a plea of fraud in an action of covenant.

*Peacock*, in support of the demurrers. *Crosby v. Wadsworth*, 6 East, 602, and *Rodwell v. Phillips*, 9 M. & W. 501, show that a crop of growing grass is an interest in land. The plea therefore takes the case out of the statute 2 & 3 Vict. c. 37, which repeals the usury laws, except as to money lent on the security of land “or any interest therein.” But even if the plea does not show that the money was secured upon an interest in land, it is still a good plea, because it alleges that the statute of Anne was violated, and it is not necessary for the defendant to show that the case was not within the statute of Victoria. *Thibault v. Gibson*, 12 M. & W. 88.

As to the demurrer to the replication to the 4th plea; that replication is inapplicable, because fraud avoids the contract *ab initio*, so that in fact there never was any such covenant as alleged in the declaration. The cases in which that replication had been held good are those of bills of exchange, where the instrument is not absolutely void as against a third party who was not privy to the fraud, *Cooper v. Garbett*, 13 M. & W. 88. He also cited *Pelly v. Rose*, 12 *id.* 435; *De Wolf v. Bevan*, 13 *id.* 160.

*Gray*, contra, argued that the 3rd plea did not show that the money was secured upon an interest in land, and that the plea would be proved by evidence that the plaintiff, not being owner of the land, was yet entitled to the grass in question, as having purchased it on the terms that it was to be severed by the owner of the soil, and then delivered to the plaintiff as a mere personal chattel. He cited *Evans v. Roberts*, 5 B. & C. 829; *Graves v. Weld*, 5 B. & Adol. 115. As to the replication to the plea of fraud, he relied on *Cooper v. Garbett*.

*Peacock* replied.

*Cur. adv. vult.*

The judgment of the court was delivered by *Rolfe*, B., (after stating the facts). The first question, therefore, is, whether the contract stated in the plea is void under the statute of Anne, notwithstanding the statute of Victoria. It certainly is void if the plea sufficiently shows that the security consisted in part of an interest

in land, for the statute of Victoria has no application to such securities. Now, part of property assigned by way of security to the lender of the money consisted of certain crops of grass described in the deed as growing on a certain estate called the Sheeping House estate, and it was argued, on the authority of *Crosby v. Wadesworth*, that this is an interest in land. When a sale of growing crops does, and when it does not, confer an interest in land, is often a question of much nicety. But certainly, when the owner of the soil sells what is growing on the land (whether the natural produce, as timber, grass, &c., or *fructus industriales*, as corn, pulse, or the like,) on the terms that he is to cut or sever them from the land, and then deliver them to the purchaser, then the purchaser acquires no interest in the soil, which is in such case only in the nature of a warehouse for what is to come to him, namely, a personal chattel. The doubt, however, is, what is the true meaning of the plea as to these crops? We think the case will be in the same position as if the plea had contained no reference to the subject-matter of the security, but had merely alleged that the covenant sued on was void as having been entered into pursuant to an usurious contract for taking more than five per cent. interest. Such a contract would clearly be void under the statute of Anne, and that statute being still in force, the plea is *prima facie* a good answer to the plaintiff's demand according to the principle laid down in *Thibault v. Gibson*. The question then arises, whether the plaintiff gets rid of the effect of the statute of Anne by merely stating that the contract was entered into after the passing of the statute of Victoria. We think he does not. The true effect of the statute of Victoria is to except from the operation of the statute of Anne all contracts not relating to land, and when the defendant has by his plea clearly brought the case within the operation of the old statute, it is not sufficient for the plaintiff to reply that which may or may not bring the contract within the operation of the statute of Victoria. It was incumbent on him to aver all which is necessary to show that the statute of Anne does not apply to the question, namely, that it was entered into after the passing of the statute of Victoria, and that it does not relate to land. The replication does aver that the contract was after the statute of Victoria, but omits to aver that it was not relating to land. It therefore fails to show all that the plaintiff was bound to make out, namely, that the statute of Anne does not apply. On these grounds, therefore, even adopting the arguments on behalf of the plaintiff, that the plea does not show sufficiently that the security did compromise an interest in land, still we think the plea is good, and that the replication offers no sufficient answer. There must therefore be judgment for the defendant on the 3rd plea.

As to the replication to the 4th plea, we were all of opinion at the time of the argument, that there was no distinction in principle between this case and the case of a bill of exchange, as

to which "*de injuria*" has been held to be a good replication (*Cooper v. Garbett*) to a plea of fraud like the present. Judgment will therefore be entered for the plaintiff on this plea.

Judgment accordingly.

## PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

Royal Assents. July 22, 1847.

Trustees Relief.  
Police Causes.  
Juvenile Offenders.  
House of Commons Costs Taxation.  
Tithes Act Amendment.  
Copyhold Commission Continuance.  
Copyright, (Colonies).  
Joint Stock Companies.  
Bankruptcy and Insolvency. (No. 3.)  
Masters in Chancery Affidavit Office.  
Turnpike Acts Continuance.  
Ecclesiastical Jurisdiction Amendment.

### House of Lords.

#### BILLS POSTPONED.

Charity Trustees.  
Clergy Offences.

These remained on the List till the close of the session. The following were previously postponed:

Incumbered Estates, (Ireland).  
Consolidation and Amendment of the Law of Bankruptcy.  
Debtor and Creditor.

### House of Commons.

#### BILLS POSTPONED.

Insolvent Debtors.  
Health of Towns.  
Winding up Joint Stock Companies.  
Prisons Regulation.  
Registration of Voters.  
Parliamentary Electors.  
Vexatious Actions.  
Trust Monies Investment.

These bills continued till nearly the close of the session. The following were previously postponed:

Highways.  
Law of Railways.  
Inclosure Act Amendment.  
Ecclesiastical Courts.  
Gifts for Pious Purposes.  
Agricultural Tenants' Right.  
Encouragement of Life Insurance.  
Roman Catholics further Relief.  
Punishment of Death.

## THE EDITOR'S LETTER BOX.

WE crave indulgence of our correspondents: the session of parliament being at an end, we shall soon discharge our arrears.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JULY 31, 1847.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

### THE LAW RELATING TO THE ELECTION OF MEMBERS OF PARLIAMENT.

As the law with regard to parliamentary elections, in common with other branches, has undergone various changes in the course of the present reign, and the noise of preparation for election contests is now heard at every side, a brief summary of the practice and provisions of the several acts of parliament at present in force on this subject,\* can scarcely be considered ill-timed, and we hope may not prove altogether useless to our readers.

The matter will be rendered more intelligible, by starting with the proclamation announcing her Majesty's intention to convene a new parliament, and proceeding through the various stages of a general election terminating with the return of the members; omitting, in the first instance, those incidental circumstances which may occasion a deviation from the ordinary course of procedure.

The order of the Queen in council for the dissolution of one parliament, and the calling of another, is uniformly accompanied by a second order, also made by her Majesty in council, directing the Lord Chancellor to cause writs to be issued summoning a new parliament to meet at a time

and place then mentioned. The act 7 & 8 W. 3, c. 25, directs that 40 days shall intervene between the teste and return of the writs, but since the Union with Scotland, a period of not less than 50 days is allowed, between the date of the proclamation and the time fixed for the assembling of the new parliament. The writs, when issued by the Lord Chancellor, are taken by his messenger to the General Post-Office in London, and delivered to the Postmaster General, or his deputy, who is required by the 53 Geo. 3, c. 89, to give an acknowledgment in writing of the receipt, and the time when delivered. The writs must then be forwarded, under cover to the returning officers to whom they are directed, by the earliest post after they have been received, accompanied by directions to the local postmasters to deliver the writs at the office of the party to whom they are directed, and to take an acknowledgment of the receipt, which is to be forwarded to the Postmaster General, at the post-office in London, where the memorandum is filed. Where the writs are addressed to the Sheriffs of London, the Sheriff of Middlesex, or any returning officer having his office within five miles of the cities of London, or Westminster, or the Borough of Southwark, the writs are taken directly to his office by the Lord Chancellor's messenger, without passing through the post-office. The neglect or delay to deliver a writ is a misdemeanor, and punishable as such. The officers to whom writs are directed are bound to indorse on the writ, immediately after the receipt thereof, the day and hour on which it was received, and to specify those particulars in a receipt

\* There are no less than 95 distinct acts of parliament now in force, relating to the Law of Elections, and Election Petitions, from the 5 Rich. 2, to 7 & 8 Vict. c. 108. See Wordsworth on Elections, Table of Statutes.



given to the person by whom it was delivered.<sup>b</sup>

The proceedings which follow the receipt of the writ, and precede the election, are subject to different regulations, as regards elections, for counties, for cities and towns being counties, and for cities and boroughs. In counties, the sheriff, within two days from the receipt of the writ, must cause a proclamation to be made for the election, not sooner than the tenth day, nor later than the 16th day, from the making of such proclamation, (25 Geo. 3, c. 84, s. 4.) In cities and towns being counties of themselves, where the writ goes directly to the returning officer, the election must be holden within eight days after the receipt of the writ, and three clear days' notice of the time and place of election must be given, which is calculated exclusive of the day of notice, and also of the day of election, (3 & 4 Vict. c. 81). In cities and boroughs the writ goes, in the first instance, to the sheriff, who is bound to make out his precepts and deliver them to the various returning officers of the cities and boroughs in his county, within three days after the receipt of the writ, and the election must be holden within eight days after the receipt of the precept, the returning officer giving at least three clear days' notice of the day of election. (7 & 8 W. 3, c. 25, and 3 & 4 Vict. c. 81.) Notices of election must be given in all places, between 8 o'clock A. M. and 6 o'clock P. M., from the 25th March to the 25th October, and between 8 o'clock A. M. and 4 P. M., during the winter months. (33 Geo. 3, c. 64.) Particular places have been appointed in certain counties for holding elections by the Reform Act, 2 W. 4, c. 45, and the Boundary Act, 2 & 3 W. 4, c. 64, but in counties for which no particular place is specified, the election must be held at the usual and customary place of election.

The proceedings on the day of election are as follow:—Between the hours of 8 and 11 A. M., the sheriff, or other returning officer, should open the election by reading the writ or precept, and then taking the bribery oath, which may be administered by any justice of the peace, or if none be present, by three electors. The Bribery Act, (2 Geo. 2, c. 24,) is then read, whereupon the returning officer asks the electors,

whom they elect to serve them in parliament? and each candidate is proposed by one elector and seconded by another. After a reasonable time, and an inquiry whether any other elector has any other candidate to propose, if no other candidate is nominated beyond the number required by the writ or precept to be returned, the returning officer, without any show of hands, or any further appeal to the electors, is bound to declare those proposed elected. If a greater number of persons are nominated than can be returned under the writ or precept, the returning officer is to determine the election, either by the view upon calling for a show of hands, or by the poll. An election by the view can only be made by consent of all the electors present. A candidate, or any elector, may demand a poll, and when legally demanded, it is imperative on the returning officer to grant a poll. (7 & 8 W. 3, c. 25.) But the poll must be demanded either before the majority is declared upon a view, or within a reasonable time afterwards.

Each candidate may be called upon after the nomination, on the day of election, or any time before the day fixed for the meeting of parliament, upon the written request of any other candidate, or of two registered electors, to declare his qualification, and if the candidate so called upon wilfully refuse to comply with the request for twenty-four hours, his election and return would be void. (1 & 2 Vict. c. 48, s. 3.) The declaration of qualification may be made before the returning officer, or a justice, or a commissioner specially appointed, and it must be certified to the Court of Chancery, or the Court of Queen's Bench, within three months. The qualification of members is now regulated by the stat. 1 & 2 Vict. c. 48, s. 2. To represent a county, the member must have an estate arising out of real or personal property of the clear yearly value of 600*l.*; and to represent a city, borough, or town, a similar estate of 300*l.* per annum, over and above incumbrances. The estate may arise out of any interest in land of any tenure, legal or equitable, situated in the United Kingdom, or the rents and profits thereof; or out of personal property, or the interest, dividends, or annual proceeds thereof. The member, however, must have an estate for his own life, or the life of some other person then living, or for a term of years absolute or determinable on his own life or the life of some other living person, of which term not less than thirteen years

<sup>b</sup> See 35 G. 3, c. 84; 53 G. 3, c. 89; and 7 & 8 W. 3, c. 25.

shall be unexpired at the time of the election.\*

In case of a contested election, the returning officer is to cause booths to be erected for the convenience of taking the poll; and by the 6 & 7 W. 4, c. 102, s. 3, in counties a polling booth is to be provided at each polling place for every 450 electors, at an expense not exceeding 40*l*. Pursuant to a provision contained in the statute 2 W. 4, c. 45, s. 63, the polling places in counties are enumerated in the schedules to the Boundary Act, but additional polling places have been appointed by the Privy Council, upon the application of justices under the 6 & 7 W. 4, c. 102. In cities or boroughs, the returning officer should provide polling places for the different parishes or districts for the city or borough, but the expenses must not exceed 25*l*. for the booths, for any parish or district, and they must be so arranged that no greater number than 300 electors shall be compelled to poll in each booth or compartment. (2 W. 4, c. 45, and 5 & 6 W. 4, c. 36.) The booths are provided at the joint and equal expense of the candidates, but if a candidate is nominated and declines going to the poll, he is not liable to defray any portion of the expenses; and if a person has been proposed without his consent, the proposer is liable to the expenses as if he had been himself a candidate. If the returning officer incurs any expenses, beyond those specified by statute the candidates will not be bound to reimburse him, unless they have rendered themselves liable by contract, express or implied.

Where a poll is demanded, it cannot take place on the day of nomination, but must be appointed in counties to commence on the next day but two after the day of nomination, unless such next day but two should happen to fall on a Saturday or Sunday, and in that event, the poll must begin on Monday. (2 W. 4, c. 45, s. 62.) In cities or boroughs the poll should commence at 8 o'clock A. M. of the day next following the day of nomination, unless such day next following should fall on a Sunday, Good Friday, or Christmas-day,

\* By the 1 & 2 Vict. c. 48, s. 9, the members for the Universities of Oxford, Cambridge, and Trinity College, Dublin, and the eldest sons of peers or lords of parliament, or of any persons qualified by the statute to serve as knights of the shire, may sit without any property qualification.

and then the polling must take place on the following days respectively. (5 & 6 W. 4, c. 36.) In counties the polling continues for two days: on the first day for seven hours, commencing at 9 o'clock A. M.; and on the second day for eight hours, finally closing at 4 o'clock P. M. In cities and boroughs the poll continues during one day only, commencing at 8 o'clock A. M., and closing at 4 o'clock P. M.

When once the sheriff, or other returning officer, grants a poll, he ought to proceed with it, and if a candidate be proposed at any time during the polling, and has a majority of votes, his election will be valid; but, although a poll be granted, if no votes are tendered within a reasonable time after the poll opens, the returning officer may declare the numbers upon a view.

The returning officer is required, before the polling day, to cause a copy of the register of voters to be prepared for use at each polling place, which he must certify under his hand to be true; and he is authorised to appoint a deputy to preside, and clerks to take the poll, at each polling place. The poll clerks are sworn by the returning officer, or his deputy, truly and indifferently to take the poll, and they must enter the place of the electors' qualification, as declared by him at the time of voting. The returning officer, or his deputy, may also appoint commissioners for the purpose of administering oaths, if requested by any of the candidates in writing.<sup>a</sup> The deputies are paid after the rate of two guineas a day, the poll clerks each one guinea a day, and the commissioners one guinea a day, and the returning officer is entitled to be repaid those expenses by the candidates in equal proportions. The candidates may severally nominate one person to act as inspector or cheque clerk for each clerk appointed to take the poll; and the returning officer allows a cheque book to be kept by such inspector at every polling place. (18 Geo. 2, c. 18, and 19 Geo. 2, c. 28.) In places where the number of electors does not amount to 600, there is no statutory provision giving a candidate a right to a check on the poll book.

Electors can only be permitted to vote at the booth or compartment allotted to the parish or place in respect of which they are registered. (2 W. 4, c. 45, s. 68). The register is conclusive evidence of the right

<sup>a</sup> See 34 Geo. 3, c. 73; 42 Geo. 3, c. 62; and 43 Geo. 3, c. 74.

of the elector to vote, and any person tendering his vote is subject to be questioned on behalf of any candidate only on two points, namely, whether he is the person whose name appears on the register, and whether he has already voted at the election? If a party whose name appears on the register has ceased to have the qualification in respect of which he was registered, his vote cannot *now* be rejected at the election for that reason, although it would be invalid in the event of a petition against the return. (6 Vict. c. 18, s. 79.) The only grounds on which the returning officer is authorised to reject the vote of any person whose name appears on the register are, that the voter is not the person whose name so appears, that he has already voted at the election, that he has refused to take the oath prescribed in respect of his identity and his not before voting, or that he has refused to take the bribery oath, if required. Falsely answering either of the questions already adverted to, and personating a voter, are indictable misdemeanors. A candidate may appoint persons to attend at the booths to detect personation, and any person so detected may be given immediately into custody, and taken before a justice of the peace: in such case the vote is not rejected if the questions are answered and the oaths taken, but the returning officer should mark in the poll book against such vote a memorandum that it has been protested against for personation. Persons whose votes have been excluded from the register by a decision of the revising barrister, may tender their votes at the election, and they must be received by the returning officer and entered in the poll book, but they are distinguished from the votes admitted and allowed, and are not counted at the election. (2 W. 4, c. 45, s. 59.)

The declaration of the voter for whom he means to vote should be made to the poll clerk, and if *he* makes a mistake in entering the vote he may amend it: whilst his book remains unaltered, it is the best evidence of the vote. If the voter makes a mistake in declaring the name of the candidate for whom he proposes to vote, he may amend his declaration at any time before the vote is recorded by the poll clerk; but after the entry is complete it would be unsafe for the poll clerk to make any alteration.

The poll clerks, at the close of the day's poll, must seal up the poll books and deliver them to the returning officer or his deputy, who is bound to give a receipt for them, and

at county elections to deliver them in the same condition to the poll clerk on the morning of the second day. On the final close of the poll, the books are delivered sealed to the returning officer, who retains them in the same state until the day next but one after the close of the poll, when the seals are broken, the number of votes cast up and declared, and the members elected publicly proclaimed. If the day next but one after the poll has closed falls on a Sunday, the proclamation, &c., is on Monday, and it must not be later than two o'clock in the afternoon. (2 W. 4, c. 45, s. 65.) After the state of the poll is declared, and the members chosen proclaimed, the returning officer seals up the poll books, and the candidates, if they think fit, may respectively affix their seals. The returning officer, or his deputy, may, if he think fit, declare the final state of the poll and make the return immediately after the poll has closed, (2 W. 4, c. 45, s. 68,) but in practice this is seldom done. After the members elected have been proclaimed, the returning officer delivers the poll books sealed to the Clerk of the Crown in Chancery, or to the postmaster of the place where such proclamation is made, addressed to the Clerk of the Crown in Chancery.

Immediately after the proclamation of the members elected, the sheriff, in counties, makes his return under seal to the Clerk of the Crown in Chancery: in cities and boroughs the returning officer returns the precept to the sheriff, and the sheriff returns the writ, and with it the return of the proper returning officer to the Clerk of the Crown. The 10 & 11 W. 3, c. 7, requires, that the return shall be made with all convenient expedition, and at the furthest within fourteen days after the election. In case of an equality of votes, there is properly a double return, and occasionally, where there are two persons claiming to act as returning officers, they may properly make a double return. If it be impossible to complete the return, the sheriff or other returning officer makes a special return. An officer making a wilfully false return, or neglecting to make a return, is liable to penalties. The return once made cannot be altered without the consent of the House, and no member is entitled to sit, unless he has been duly returned, but if the return is good in substance, it cannot be successfully impeached for want of form.

The 6 Vict. c. 18, s. 55, contains a pro-

vision for the expenses incurred by returning officers of boroughs, which are to be defrayed out of the poor's rates, with reference to the proportionate number of voters in the several parishes of the borough. There is no similar enactment as to sheriffs of counties.

The incidental proceedings at elections, and the law relating to undue influence, bribery, treating, and riots at elections, as well as the proceedings upon election petitions, will be more conveniently treated of in a future number.\*

## CLOSE OF THE SESSION.

### Royal Assents.

In addition to the bills which received the Royal Assent on the 22nd instant, stated at p. 304, *ante*, the following also received the Royal Assent on that day:—

Canal Companies.  
Highway Rates.  
Passengers' Act Amendment.  
Stock in Trade Exemption.

23rd July.

Poor Removal Act Amendment.  
Poor Law Administration.  
Commons Inclosure, No. 3.  
Bishopric of Manchester.

### THE QUEEN'S SPEECH.

Parliament was prorogued by the Queen in person, on Friday the 23rd instant. It appears that her Majesty was not advised by her ministers to take any notice of the acts which have been passed during the session for the alteration of the law.

The Speaker of the House of Commons, however, in his address to her Majesty, thus briefly adverts to that subject:—

"During the progress of the session which is now about to terminate, we have maturely considered *various measures for the practical improvement of the law*, and for the amelioration of the moral and social condition of the people; and where it has not been possible to bring these measures to a satisfactory conclusion, we hope to have prepared the way for *sound and useful legislation* in future sessions of parliament." May this be so! *Amen.*

### PROCLAMATION FOR DISSOLVING THE LATE AND CALLING A NEW PARLIAMENT.

VICTORIA R.

Whereas we have thought fit, by and with

\* For the materials from which this summary is framed, we are entirely indebted to Mr. Wordsworth's *Treatise on the Law and Practice of Elections*, a third edition of which has been most opportunely published, to which we refer those who desire full and accurate information on the subject.

the advice of our Privy Council, to dissolve this present Parliament, which was this day prorogued and stands prorogued to *Tuesday*, the 21st day of *September* next. We do for that end publish this our Royal proclamation, and do hereby dissolve the said Parliament accordingly; and the Lords Spiritual and Temporal, and the knights, citizens, and burgesses, and the commissioners for shires and burghs, of the House of Commons are discharged from their meeting and attendance on the said *Tuesday*, the 21st day of *September* next: and we, being desirous and resolved, as soon as may be, to meet our people, and to have their advice in parliament, do hereby make known to all our loving subjects our Royal will and pleasure to call a new Parliament; and do hereby further declare, that, with the advice of our Privy Council, we have given order that our Chancellor of that part of our United Kingdom called Great Britain, and our Chancellor of Ireland, do, respectively, upon notice thereof, forthwith issue our writs in due form, and according to law, for calling a new Parliament: and we do hereby also, by this our Royal proclamation under our Great Seal of our United Kingdom, require writs forthwith to be issued accordingly by our said Chancellors respectively, for causing the Lords Spiritual and Temporal and Commons, who are to serve in the said Parliament, to be duly returned to, and give their attendance in, our said Parliament; which writs are to be returnable on *Tuesday*, the 21st day of *September* next.

Given at our Court at Buckingham Palace, this 23rd day of July, in the year of our Lord 1847, and in the 11th year of our reign.

GOD save the QUEEN.

## LEGAL CANDIDATES FOR THE NEW PARLIAMENT.

Aglionby, H. A., *Cockmouth.*  
Allen, Robert, S. L., *Birmingham.*  
\*Benbow, John, *Dudley.*  
Bernal, R., *Rochester.*  
†Bethell, R., Q. C., *Frome.*  
\*Blewitt, R. J., *Monmouth.*  
Bodkin, W. H., *Rochester.*  
\*Bremridge, R., *Barntaple.*  
Buller, C., Q. C., (*Judge Advocate*), *Liskeard.*  
Cabbell, B. B., *Birmingham.*  
Cardwell, E., *Liverpool.*  
Cobbett, J. M., *Oldham.*  
\*Cobbold, J. C., *Ipswich.*  
Cockburn, A. E., Q. C., *Southampton.*  
Cripps, William, *Cirencester.*  
Escott, B., *Winchester.*  
Dundas, Sir D., S. G., *Sutherlandshire.*  
\*Freshfield, J. W., *London.*  
Glover, W., S. L., *Hereford.*  
Godson, R., Q. C., *Kidderminster.*  
Greene, T., *Lancaster.*  
Grey, Right Hon. Sir G., (*Home Secretary*),  
*North Northumberland.*  
\*Grimsditch, J., *Macclesfield.*

†\*Harvey, D. Whittle, *Marylebone*.  
 Hayter, W. G., Q. C., *Wells*.  
 Hildyard, R. C., Q. C., *Whitehaven*.  
 Hogg, Sir J. W., Bart., *Honiton*.  
 †Humphrey, L. C., Q. C., *Cambridge*.  
 Inglis, Sir R. H., *Oxford University*.  
 Jervis, Sir J., Knt., A. G., *Chester*.  
 Jervis, John J., *Horsham*.  
 Kelly, Sir F., Knt., Q. C., *Lyme Regis*.  
 Law, Hon. C. E., Q. C., *Cambridge University*.

Lefevre, Right Hon. G. S., *Hampshire*.

Martin, S., Q. C., *Pontefract*.

\*Neeld, J., *Chippenham*.

Nicholl, Dr., *Cardiff*.

Palmer, Roundell, *Plymouth*.

†\*Payne, W., *London*.

\*Pearson, C., *Lambeth*.

Richards, R., *Merionethshire*.

Roebuck, J. A., Q. C., *Bath*.

Rolt, J., Q. C., *Stamford*.

Romilly, John, Q. C., *Devonport*.

Shee, W., S. L., *Marylebone*.

Stuart, J., Q. C., *Newark*.

Talfourd, T. N., Q. S., *Reading*.

Tancred, H. W., Q. C., *Banbury*.

Thesiger, Sir F., Knt., Q. C., *Abingdon*.

Twiss, H., Q. C., *Bury St. Edmunds*.

Walpole, S. H., Q. C., *Midhurst*.

†Warren, S., *Finsbury*.

Warren, R. B., S. L., *Frome*.

Whateley, W., Q. C., *South Shields*.

\*Wilks, J., *St. Albans*.

\*Wire, D. W., *Boston*.

\* Marked thus, are or have been solicitors.

† Thus, declined or withdrawn.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### BANKRUPTCY AND INSOLVENCY.

10 & 11 VICT. C. 102.

An Act to abolish the Court of Review in Bankruptcy, and to make Alterations in the Jurisdiction of the Courts of Bankruptcy and Court for Relief of Insolvent Debtors. [July 22, 1847.]

1. *Court of Review abolished*.—Whereas it is expedient to abolish the Court of Review in Bankruptcy, and to make alterations in the jurisdiction of the Courts of Bankruptcy and Court for Relief of Insolvent Debtors: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the Court of Review in Bankruptcy and the offices of the chief judge and other judges of the Court of Bankruptcy be hereby abolished.

2. *Jurisdiction of Court of Review transferred to one of the Vice-Chancellors*.—And be it enacted, That all the jurisdiction, power, au-

thorities, and privileges of the said Court of Review in Bankruptcy hereby abolished shall be transferred to and vested in and shall hereafter be exercised and enjoyed by such one of the Vice-Chancellors of the High Court of Chancery as the Lord Chancellor shall from time to time be pleased to appoint, and that all persons now holding office or acting in the said Court of Review shall continue to hold the same, and to perform the duties thereof under the jurisdiction hereby created, in the same manner and under the same tenure and subject to the same regulations as they now hold the same and act therein: Provided always, that notwithstanding the passing of this act the present judges of the Court of Review shall be entitled to the same rank and precedence to which they are now entitled.

3. *Laws and orders to apply to Vice-Chancellor so sitting*.—And be it enacted, That all laws, orders, and authorities touching the practice and manner of proceeding in the said Court of Review, and appealing to and from the said court, shall continue in force, and be applicable to the jurisdiction of the said Vice-Chancellor so appointed; and that all sums and fees shall continue to be payable and receivable by the like persons, and shall continue to be paid and applied to the like purposes, as the same have heretofore been paid and received in respect of any matter in the said Court of Review.

4. *Jurisdiction of the Courts of Bankruptcy under 5 & 6 Vict. c. 116; 7 & 8 Vict. c. 96, and 8 & 9 Vict. c. 127, transferred to Court for the Relief of Insolvent Debtors and to the County Courts*. 9 & 10 Vict. c. 95.—And be it enacted, That from the time this act shall commence and take effect all power, jurisdiction, and authority given to her Majesty's Court of Bankruptcy and district Courts of Bankruptcy, and to the commissioners thereof, in matters of insolvency, by an act passed in the 5 & 6 Vict. c. 116, intituled, "An Act for the Relief of Insolvent Debtors," and by an act passed in the 7 & 8 Vict. c. 96, intituled "An Act to amend the Law of Insolvency, Bankruptcy, and Execution," and by an act passed in the 8 & 9 Vict. c. 127, intituled, "An Act for better securing the Payment of Small Debts," or by the rules and orders made in pursuance of any of the said acts, shall be transferred to and vested in the Court for the Relief of Insolvent Debtors in England, and to and in the commissioners thereof for the time being, and to and in the County Courts constituted or to be constituted under an act passed in the 9 & 10 Vict. c. 95, intituled "An Act for the more easy Recovery of Small Debts and Demands in England," in manner herein-after mentioned.

5. *In Insolvent Debtors' Court the provisional assignee, and in County Courts the clerk, to act as official assignee; clerks of County Courts to act as registrars; bailiffs of County Courts to act as messengers*.—And be it enacted, That in the Court for the Relief of Insolvent Debtors the provisional assignee, and in the said County

Courts the clerk of the court, shall in every case of insolvency under such two first-mentioned acts be and act as the official assignee of the estate and effects of the insolvent; and that in each of the said County Courts the clerk of such court shall act as the registrars of the Court of Bankruptcy have heretofore been accustomed to act under any of the said acts; and every such clerk shall do and perform all acts heretofore done and performed by such registrars or by the clerk of the Insolvent Debtors' Court under any of the said acts; and every such clerk shall do and perform all such acts and duties necessary for carrying this act into effect as shall be ordered by any such County Court, or by any commissioner of the said Court for the Relief of Insolvent Debtors; and that the high bailiff of every such County Court and his assistants shall be and act as a messenger of the Court of Bankruptcy and his assistants have heretofore been accustomed to act under the said acts; and such high bailiff and his assistants shall do all acts heretofore done under the said acts, and shall possess and enjoy all the powers, authorities, and privileges when acting under the said acts as have been heretofore done, possessed, or enjoyed by any messenger of the Court of Bankruptcy or his assistants when acting under any of the said acts, and shall do and perform all such acts as shall be ordered by any such County Court for the purpose of carrying this act into effect.

6. *Jurisdiction of Insolvent Debtors' Court and County Courts.*—And be it enacted, That from the time this act shall commence and take effect the Court for the Relief of Insolvent Debtors in England, and the commissioners thereof, and the judges of the County Courts aforesaid, shall have jurisdiction in all matters of insolvency and debt under the aforesaid acts in manner following; that is to say, the said Court for the Relief of Insolvent Debtors, and the commissioners thereof, in all cases in which the insolvent in cases of insolvency, or the defendant in the case of any summons issued under the aforesaid act for the better securing the payment of small debts, shall have resided for six calendar months next immediately preceding the time of filing his petition, or of the suing out of any such summons aforesaid within any parish the distance whereof, as measured by the nearest highway from the General Post Office in London to the parish church of such parish, shall not exceed the distance of twenty miles, to which district the jurisdiction of the said court and the commissioners thereof under the aforesaid acts is hereby restricted; and the said County Courts aforesaid in all cases wherein the insolvent or defendant shall have resided elsewhere, and shall have resided for six calendar months next immediately preceding the time of filing his petition, or the suing out of any summons within the district of such County Court to which such insolvent shall prefer his petition, or to which any plaintiff may apply for any summons as aforesaid; and that every commissioner of the Court for the Relief of In-

solvent Debtors, and every such County Court aforesaid, shall, from and after the time this act shall commence and take effect, have and exercise, in the prosecution of such petitions and summonses filed and issued in such courts respectively, the like power and authority in all respects under the aforesaid acts as the commissioners of Her Majesty's Court of Bankruptcy and District Courts of Bankruptcy have heretofore had and exercised on the presentation of petitions of insolvent debtors, and on such summonses as aforesaid, under such acts, except as herein-after otherwise provided, and shall each, singly, be and form a court for every purpose under this or the aforesaid acts; and that every commissioner of the said Court for the Relief of Insolvent Debtors shall henceforth, singly, be and form a court for every purpose under all acts now in force or which may hereafter be in force relating to insolvent debtors.

7. *Recited acts to apply to persons petitioning who have been in prison.*—And be it declared and enacted, That the said two first-mentioned acts shall apply to the cases of persons petitioning under the said acts, although they may have been already in prison under judgment or otherwise for debt.

8. *If insolvent shall not have resided six months, jurisdiction vested in Insolvent Court or County Court.*—Provided always, and be it enacted, That if any such insolvent shall not have so resided for six months in any one place as aforesaid, then he shall file his petition in the said Insolvent Debtors' Court, and the jurisdiction aforesaid in the matter of such insolvency shall be vested either in the Court for Relief of Insolvent Debtors in London, or in such one of the said County Courts as the said Court for the Relief of Insolvent Debtors shall direct.

9. *Petitions now pending under recited acts, &c., to be disposed of notwithstanding the passing of this act.*—And be it enacted, That with respect to petitions under the aforesaid acts or either of them which are now in dependence, or which shall have been presented to the Court of Bankruptcy or any District Court of Bankruptcy before the time at which this act shall commence and take effect, the provisions of such acts, and the jurisdiction of such courts and the commissioners thereof under such acts, or under the rules and orders made in pursuance thereof, shall remain in full force and effect notwithstanding the passing of this act.

10. *Jurisdiction of the Court for Relief of Insolvent Debtors on circuit transferred to County Courts.*—And be it enacted, That from and after the fifteenth day of September next the circuits of the commissioners of the said Court for the Relief of Insolvent Debtors shall be abolished; and that if thereafter any insolvent debtor in custody in any of Her Majesty's gaols situated elsewhere than within the district to which the jurisdiction of such court is restricted as herein-before mentioned shall petition such court under any act or acts

relating to insolvent debtors, other than the two first-mentioned acts or this act, or if any such prisoner shall have so petitioned prior to the passing of this act, and his petition shall not have been heard, or if the same shall have been heard and the consideration thereof shall have been adjourned, such court or some commissioner thereof shall forthwith, after the schedule of such prisoner shall have been duly filed in the case of any new petition, and at any time which to such court or commissioner shall seem fit in the case of any petition which shall not have come on for hearing, or the hearing of which shall have been adjourned as aforesaid, make an order referring such petition for hearing to the County Court within the district of which such insolvent debtor is in custody, and shall transmit such petition and schedule to such court for hearing accordingly; and that the judge of such court shall appoint a time and place for such prisoner to be brought up before such court, and cause the usual notices to be given; and that any court to which any such petition shall be so referred and transmitted shall have and possess the same power and authority with respect to every such petition, and shall make all such orders, give all such directions, and do all such matters and things requisite for the discharging or remanding of such prisoner, and otherwise respecting such prisoner, his schedule, creditors, and assignees, as the said Court for the Relief of Insolvent Debtors or any commissioner thereof might make, give, or do in the matters of petitions heard before such court or commissioner under such acts; and that every such petition and schedule, and all judgments, rules, orders, directions, and proceedings pronounced, made, and done thereon in all and every the matters aforesaid by such County Court, shall be returned to the said Court for the Relief of Insolvent Debtors, signed by the judge of such County Court, to be a record of the said Court for the Relief of Insolvent Debtors, and to be kept as such among the records thereof; and the said Court for the Relief of Insolvent Debtors, and every commissioner thereof, in every case in which any insolvent debtor petitioning the Court for the Relief of Insolvent Debtors under such acts shall be in custody in any of Her Majesty's\* gaols within the district to which the jurisdiction of such court is limited aforesaid, and the County Courts in the matter of every such petition so referred and transmitted for hearing as aforesaid, shall have power to issue a warrant or order, directed to the governor, keeper, or gaoler, of any gaol, directing him to bring the insolvent before the County Court on the day appointed for the hearing of his petition, or at any adjourned sitting held in the matter of this petition, and every such governor, keeper, or gaoler shall obey such warrant; and every such court may order the expense attending the bringing up of every such insolvent to be paid by the provisional assignee out of the estate and effects of such insolvent, or if there be no estate, or

the same be insufficient for such purpose, out of the interest and profit arising from any government securities upon which any unclaimed money produced by the estates and effects of insolvent debtors may be invested.

11. *Recognizances of sureties entered into under 1 & 2 Vict., c. 110, for enforcing attendance of insolvents, to bind persons to appear before county courts.*—And whereas in pursuance of an act passed in the 1 & 2 Vict., c. 110, intituled, “An Act for abolishing Arrest on Mesne Process in Civil Actions except in certain Cases, for extending the Remedies of Creditors against the Property of Debtors, and for amending the Laws for the Relief of Insolvent Debtors in England,” divers persons as sureties have entered into recognizances to the provisional assignee of the Insolvent Debtors Court, with conditions that the insolvents therein mentioned should duly appear at the time and places therein mentioned, and it is necessary that some of such insolvents should appear before the County Courts under this act; be it therefore enacted, That every such recognizance shall extend to bind the persons who may have entered into the same, in case the insolvent debtor therein mentioned shall not at the time appointed in such recognizance duly appear before the County Court to which the matter of such insolvent is transferred by this act and on every adjourned hearing, or shall not abide by the final judgment of such court.

12. *Fees in Insolvent Debtors' Court to go in reduction of certain compensations to its officers.*—And whereas in consequence of late alterations in the laws of imprisonment for debt certain compensations have become payable and are paid by the commissioners of her Majesty's treasury to the officers of the court for the relief of insolvent debtors in respect of the diminution of fees received therein: And whereas by the additional business given to the said court by this act the fees payable therein will again be increased, whereby a less sum will be required for the said compensations; be it enacted, That the fees to be received in the said court in matters where jurisdiction is given by this act shall be received by the same persons, to be by them applied in the same manner as the fees received in matters heretofore under the jurisdiction of the said court are now applied, any thing herein to the contrary notwithstanding: Provided always, that it shall be lawful for the commissioners of her Majesty's treasury for the time being, or any three of them, and they are hereby empowered, to give such directions as they shall think proper in regard to the compensation allowances now payable to the officers and clerks of the court for the relief of insolvent debtors in England, under the provisions of the said recited act passed in the eighth year of the reign of her Majesty, in consequence of the fees to be received by them being again increased by the operation of this act.

13. *Power to Secretary of State to order*



*what fees are to be paid to officers under 9 & 10 Vict., c. 95, and this Act. Until such order made clerks and bailiffs to receive all fees as heretofore.*—And be it enacted, That it shall be lawful for one of her Majesty's principal secretaries of state, with the consent of the commissioners of her Majesty's treasury, from time to time to order what fees shall be paid and received by the several officers or otherwise under and by virtue of the said recited act passed in 9 & 10 Vict., c. 95, and the amount of such fees respectively; and that until such order shall be made the clerks of the several County Courts shall have and receive for their own use all fees which have heretofore been taken under any of the aforesaid acts by any officer of the Court of Bankruptcy, or by any officer or other person of or connected with the court for the relief of insolvent debtors, except as hereinafter mentioned, for business which is by this act transferred to the County Courts; and that the several high bailiffs acting as messengers under this act as aforesaid shall have and receive for their own use all fees which have heretofore been paid to the messengers of the Court of Bankruptcy when doing the business by this act directed to be done by such bailiffs.

14. *Lord Chancellor may give directions for sittings of Court of Bankruptcy elsewhere than in London.*—And whereas it may be expedient that the Court of Bankruptcy in London should hold sittings in matters of bankruptcy at some place or places within the district over which the jurisdiction of such court extends, at which such court hath not hitherto been used to sit; be it declared and enacted, That it shall be lawful for the Lord Chancellor, at any time or times whenever it shall appear to him to be expedient, by any order or orders to give the necessary directions in that behalf, ordering any commissioner, registrar, official assignee, messenger, or usher of the Court of Bankruptcy in London to sit and attend and act in the prosecution of any fiat in bankruptcy at any place elsewhere within such district than in the city of London; and every commissioner, registrar, official assignee, messenger, and usher so sitting, attending, and acting shall have the like power, jurisdiction, and authority as if sitting, attending, and acting in the prosecution of such fiat in London.

15. *Lord Chancellor may order payment of travelling and other expenses.*—And be it enacted, That any commissioner or registrar so sitting and acting shall have paid to him, in addition to his salary, by the governor and company of the bank of England, by virtue of any order or orders of the Lord Chancellor to be made from time to time for that purpose, out of the interest and dividends that have arisen or may arise from the securities now or hereafter to be placed in the Bank of England to an account there, entitled "The Bankruptcy Fund Account," (but subject and without prejudice to any prior charges on the

same,) such sum of money for travelling and other expenses as the Lord Chancellor shall deem fit.

16. *Forms may be altered.*—And be it enacted, That the forms given in the schedules to any of the said acts, or any forms heretofore used under the said acts, may be altered so far as to adapt them to the change of jurisdiction by this act directed.

17. *Vacancies not to be filled up till after the termination of the next session of parliament.*—And be it enacted, That the office of the first one of the commissioners of the Court for Relief of Insolvent Debtors, and of the first two of the commissioners of the Court of Bankruptcy in London, which shall become vacant after the passing of this act, shall not be filled up until after the termination of the session of parliament next after such vacancies shall have occurred.

18. *Judges of County Courts incapable of being members of parliament.*—And be it enacted, That no judge of any County Court who has been appointed or who shall hereafter be appointed to that office under or by virtue of the hereinbefore recited act passed in 9 & 10 Vict., intitled, "An Act for the more easy Recovery of Small Debts and Demands in England," shall, during his continuance in such office, be capable of being elected or of sitting as a member of the House of Commons.

19. *Interpretation of "Lord Chancellor."*—And be it enacted, That the words "Lord Chancellor" shall in the construction of this act be interpreted to mean also and include the lord keeper and lords commissioners for the custody of the great seal of the united kingdom for the time being.

20. *Commencement of this act.*—And be it enacted, That this act shall commence and take effect from the 15th of September, 1847.

21. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in this session of parliament.

#### REMOVAL OF POOR.

10 & 11 VICT. C. 33.

An Act to amend the Law relating to the Removal of poor Persons from England and Scotland. [21st June, 1847.]

1. 8 & 9 Vict. c. 117; 8 & 9 Vict. c. 83, s. 77. *Guardians, &c., in England may take persons removable therefrom under the first-recited act before two justices without summons, &c.*—Whereas an act was passed in the 8 & 9 Vict. c. 117, for the removal from England of poor persons who, though born in Scotland, Ireland, or the islands of Man, Scilly, Jersey, or Guernsey, and not settled in England, are chargeable to some parish in England; and by another act passed in the same year provision was made for the removal from Scotland of poor persons who, though born in England, Ireland, or the Isle of Man, and not settled in

Scotland, receive relief from some parish or combination in Scotland: And whereas it is expedient that certain provisions of the said acts should be amended: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That it shall be lawful for any guardian, relieving officer, or overseer of any parish or union in England to take and convey before two justices of the peace, without summons or warrant, every poor person who shall become chargeable to any parish in England, and who he may have reason to believe is liable to be removed from England under the first-recited act; and the justices before whom any such person shall be so brought shall hear and examine and proceed in the same manner in all respects as if such person had been brought before them under and in the manner directed by that act.

2. *Inspectors of the poor in Scotland to take persons removable therefrom under secondly-recited act before sheriff or two justices, without previous complaint, &c.*—That it shall be lawful for any inspector of the poor, or other officer appointed by the parochial board of any parish or combination in Scotland, to take and convey before the sheriff or any two justices of the peace of the county in which the parish or combination for which such inspector or officer acts, or any portion thereof is situated, without previous complaint or warrant in that behalf, every poor person who shall be in the course of receiving parochial relief in any parish or combination in Scotland, and who he may have reason to believe is liable to be removed from Scotland under the secondly-recited act; and the sheriff or justices before whom any such person shall be so brought shall make such examination, and proceed in the same manner in all respects as if such person had been brought before him or them under and in the manner directed by that act.

3. *Persons taking paupers before justices to have powers of constables.*—That every person who by this act is authorized to take and convey any poor person before any sheriff or justices shall, in the execution of this act, in that behalf have and exercise all the rights, privileges, powers, and immunities with which a constable is by law invested.

4. *Interpretation of act.*—That in the construction of this act the singular number or masculine gender shall, except when the context excludes such construction, be understood to include and shall be applied to several persons, matters or things, as well as to one person, matter, or thing, and to females as well as males respectively; and that the words "justices of the peace" shall be understood to include and extend to a justice of the peace or magistrate of a county, county of a city, or county of a town, or of any city or town corporate.

## NOTICES OF NEW BOOKS.

*Treatise on the Pleadings in suits in the Court of Chancery, by English Bill.* By JOHN MITFORD, ESQ., (the late Lord Redesdale.) The Fifth Edition, comprising a large body of additional Notes. By JOSIAH W. SMITH, B.C.L., of Lincoln's Inn, Esq., Barrister-at-Law, Editor of *Fearne's Contingent Remainders*, and Author of a *Treatise on Executory Interests*. London: V. & R. Stevens and G. Norton. 1847. Pp. liv. and 477.

LORD REDESDALE's *Treatise on Equity Pleadings* was characterized by Lord Eldon as "a wonderful effort to collect what is to be deduced from authorities, speaking so little what is clear." 9 Ves. 54. Sir Thomas Plumer followed this high authority by remarking, that the book "has ever since been received by the whole profession as an authoritative standard and guide." 2 Jac. & W. 152.

The learned author edited three editions himself, in the last of which he observed, that "the materials from which the first edition was compiled were not very ample or satisfactory, consisting principally of mere books of practice, or reports of cases, generally short, and in some instances, manifestly incorrect and inconsistent." The second edition appeared at the distance of seven years, and from that time nearly 28 years elapsed before the publication of the 3rd edition. Mr. Jeremy was entrusted by Lord Redesdale with the 4th edition, in 1827, and in executing that honourable task the learned editor examined the authorities cited in the last edition, and added the references to new cases, making such remarks as were necessary to the introduction of matter not precisely applicable to the original text.

Mr. Josiah W. Smith, the editor of the present, being the 5th edition, has adopted verbatim the 4th edition, with Mr. Jeremy's notes, which are printed in double columns, under the text, and has given his own notes across the page under the former notes. The able and elaborate note on *Parties*, which occupies about 40 pages, is placed at the end of the volume. Mr. Smith thus states the scope of his labours, and the plan he has adopted:—

"The present editor's notes comprise the enactments and orders, relating to the subject of equity pleading, which have been made within the period extending from the beginning of the year 1826, which was shortly before the

publication of the fourth edition, down to the end of the year 1846, with the decisions reported within the same period, whether in the octavo Reports, the Law Journal, or the Jurist, to the number of about six hundred.

"The endeavour of the editor has been, to divest the cases of those particulars which are of no use to the student, and have no essential relevancy to the matters with reference to which such cases are consulted by the practitioner, and to accomplish the difficult task of moulding the essential parts of the cases, and the reasons of the decisions, where any are expressed, into succinct yet clearly expressed propositions, placita, or rules, in such a way as to exhibit the points and principles of pleading which the decisions in those cases serve to establish.

"He hopes that the notes he has added will be found to consist of a precise and perspicuous enunciation of what may be *relied on as matter of actual decision*. Mere dicta and opinions he has passed by, as too often tending to mislead. He has also for the most part abstained from stating general propositions founded on a small number of particular cases, as liable to the same objection. And while he has avoided giving the cases in the narrative or statement form, comprising names, dates, and other unnecessary particulars, he has still endeavoured to preserve, in the terms of the placita, the essential, specific features of each case, because, if he had not, such placita would not acquaint the practitioner with the degree of resemblance or material difference between the cases from which they are derived and the cases occurring in practice with reference to which they may be consulted. The following quotations may suffice as illustrations of the propriety of the course thus pursued: 'That case, so far as it applies to the present, was a mere dictum. *The decision itself is not applicable.*'—"The words attributed to me were not necessary for the purpose of the decision: and *nothing except the decision is authority which binds.*"<sup>b</sup>—It is true that the dictum of Lord Cottenham is more generally expressed; but *all dicta should be construed according to the circumstances of the case in which they are found.*'—"It is very difficult to say that *these particular cases* could have been decided otherwise than they were; but the *marginal notes go much further than the judgments.*"<sup>a</sup>

The original treatise comprised some of the subjects of jurisdiction and practice, in

addition to pleading; but Mr. Smith's notes are almost exclusively confined to pleading as the proper scope of the book, leaving to other writers the discussion of other subjects.

As an example of the work, we extract the following from the introductory chapter, with some of the notes of the present editor:—

"Every bill must have for its object one or more of the grounds upon which the jurisdiction of the court is founded; and as that jurisdiction sometimes extends to decide on the subject, and in some cases is only ancillary to the decision of another court, or a future suit, the bill may either complain of some injury which the person exhibiting it suffers, and pray relief according to the injury; or, without praying relief, may seek a discovery of matter necessary to support or defend another suit;<sup>c</sup> or, although no actual injury is suffered, it may complain of a threatened wrong, and stating a probable ground of possible injury, may pray the assistance of the court to enable the plaintiff, or person exhibiting the bill, to defend himself against the injury whenever it shall be attempted to be committed. As the court of chancery has general jurisdiction in matters of equity not within the bounds or beyond the powers of inferior jurisdictions, it assumes a control over those jurisdictions, by removing from them suits which they are incompetent to determine. To effect this, it requires the party injured to institute a suit in the court of chancery, the sole object of which is the removal of the former suit by means of a writ called a writ of *certiorari*; and the prayer of the bill used for this purpose is confined to that object.

"The bill, except it merely prays the writ of *certiorari*, generally requires the answer of the defendant, or party complained of, upon oath. An answer is thus required, in the case of a bill seeking the decree of the court on the subject of the complaint, with a view to obtain an admission of the case made by the bill, either in aid of proof, or to supply the want of it; a discovery of the points in the plaintiff's case controverted by the defendant, and of the grounds on which they are controverted; and a discovery of the case on which the defendant relies, and of the manner in which he means to support it. If the bill seeks only the assistance of the court to protect the plaintiff against a future injury, the answer of the defendant upon oath may be required to obtain an admission

<sup>a</sup> See *Stoman v. Kelly*, 4 Y. & C. Eq. Ex. 172.

<sup>b</sup> See *James v. Herriot*, 5 Law J. (N. S.) Ch. R., 133; and compare *Bedford v. Gates*, 4 Y. & C. Eq. Ex. 21, with *Kimber v. Ensworth*, 1 Hare, 293.

*Alderson, B.*, in *Davies v. Quarterman*, 4 Y. & C. Eq. Ex. 722.

<sup>c</sup> *Wigram, V. C.* in *Malcolm v. Scott*, 3 Hare, 63. And see *Sharpe v. Taylor*, 11 Sim 50; and *Barnard v. Laing*, 6 Jur. 1050.

<sup>c</sup> It is not allowable in effect to unite in one bill, a bill for relief, and a bill for discovery on a matter which is quite distinct from that relief, although both be connected with the same circumstances. So that in a bill for a receiver, pending a litigation as to probate, a plaintiff cannot have a discovery in reference to the merits on that litigation. *Wood v. Hitchings*, 3 Beav. 504.

of the plaintiff's title, and a discovery of the claims of the defendant, and of the grounds on which those claims are intended to be supported. When the sole object of a bill is a discovery of matter necessary to support or defend another suit, the oath of the defendant is required to compel that discovery. The plaintiff may, if he thinks proper, dispense with this ceremony, by consenting to or obtaining an order of the court for the purpose; and this is frequently done for the convenience of parties where a discovery on oath happens not to be necessary. And where the defendant is entitled to privilege of peerage, or as a lord of parliament, or is a corporation aggregate, the answer, in the first case, is required upon the honour of the defendant, and in the latter, under the common seal.

"To the bill thus preferred, unless the sole object of it is to remove a cause from an inferior court of equity, it is necessary for the person complained of either to make defence, or to disclaim all right to the matters in question by the bill." As the bill calls upon the defendant

to answer the several charges contained in it, he must do so, unless he can dispute the right of the plaintiff to compel such an answer, either from some impropriety in requiring the discovery sought by the bill, or from some objection to the proceeding to which the discovery is proposed to be assistant; or unless by disclaiming all right to the matters in question by the bill he shows a further answer from him to be unnecessary."

We think Mr. Smith has very carefully edited this excellent standard treatise, added all the new and important authorities, and rendered the work essential to every equity practitioner.

### CONTENTIONS AT THE CHANCERY BAR.

It appears that a meeting of the Bar, called by the Attorney-General in pursuance of a requisition addressed to him, was held on Friday, the 23rd July, in the Middle Temple Hall, in reference to the unpleasant altercation which occurred in the Court of the Vice-Chancellor of England, on the 13th July last, and was alluded to in our last number under this heading. The *Morning Chronicle* states, we have reason to believe correctly, that a letter was read at this meeting from Mr. C. P. Cooper, expressing his regret at having authorised the publication of the pamphlet already noticed, (*ante*, p. 290); and also a letter from Mr. Bethell, apologising to the bar for certain expressions publicly used by him in the Court of the Vice-Chancellor, on the occasion referred to. Resolutions, we understand, were agreed to expressive of the sense the meeting entertained of the propriety of the course the learned gentlemen respectively adopted on this occasion, but disapproving of the publication of the pamphlet in question, and of the offensive expressions indulged in by Mr. Bethell.

The Bar meeting, irrespective of its im-

"By the 23rd order of August, 1841, "where no account, payment, conveyance, or other direct relief is sought against a party to a suit, it shall not be necessary for the plaintiff to require such party, not being an infant, to appear to and answer the bill. But the plaintiff shall be at liberty to serve such party, not being an infant, with a copy of the bill, whether the same be an original, or amended, or supplemental bill, omitting the interrogating part thereof: and such bill, as against such party, shall not pray a subpoena to appear and answer, but shall pray that such party, upon being served with a copy of the bill, may be bound by all the proceedings in the cause. But this order is not to prevent the plaintiff from requiring a party against whom no account, payment, conveyance, or other direct relief is sought, to appear to and answer the bill, or from prosecuting the suit against such party in the ordinary way, if he shall think fit." And by the 29th order "where no account, payment, conveyance or other relief is sought against a party, but the plaintiff shall require such party to appear to and answer the bill, the costs occasioned by the plaintiff having required such party so to appear and answer the bill, and the costs of all proceedings consequential thereon, shall be paid by the plaintiff, unless the court shall otherwise direct."

According to the decision in *Lloyd v. Lloyd*, in a creditor's suit for administering the estate of a testator who has devised his real estate, subject to a power of sale for the payment of such part of his debts as his personal estate might be insufficient to pay, the devisees may be served with a copy of the bill under the 23rd order. 1 Y. & C. Ch. C. 181.

But according to the decision in *Barkley v. Lord Reay*, where a suit is instituted for the raising of a legacy by a sale or mortgage of entailed real estate against the trustees thereof, who have the legal fee and full power to sell or

mortgage and give receipts, it is not sufficient to serve the equitable tenant in tail with a copy of a bill. 2 Hare, 306.

The 23rd order does not apply to the Attorney General. *Christopher v. Cleghorn*, 8 Beav. 314. As to other persons not within this order, see *Marke v. Turner*, 7 Jur. 1102.

The prayer that a party who is not required to appear and answer may be bound by all the proceedings in the cause, ought to be inserted in that part of the bill in which process is prayed against the other defendants. *Gibson v. Haynes*, 6 Jur. 203. L. C.

# UNITED LAW CLERKS' SOCIETY.

## FIFTEENTH ANNUAL REPORT OF THE COMMITTEE OF MANAGEMENT.

The following Report was read at the 15th anniversary festival held at the Crown and Anchor, Strand, on the 15th June, 1847:—

The committee have much pleasure (in accordance with their annual custom) in submitting to this meeting a report of their proceedings during the past year, the fifteenth of the society's existence. On reviewing those transactions, they are happy to say, that although the disbursements have greatly exceeded those of the preceding year, the receipts have not fallen far short of the increased claims made upon the funds.

The first claim arises from the assistance afforded to the members when temporarily disabled by illness from pursuing their customary employment. Twenty-six members have been thus afflicted during the year, and they have received various sums (dependent upon the duration of their illness), amounting together to 239*l.* 8*s.* The total sum so expended amounts to 1457*l.* 5*s.*, considerably more than a moiety of which has been paid within the last five years.

On the superannuation fund there are still two claimants, each in receipt of 31*l.* 4*s.* per annum, payable weekly. This allowance is only granted to members permanently disabled from following any employment. One of these cases forcibly illustrates the benefit resulting from a fund like the present. Little more than a year since, the member, then an efficient member, was apparently in perfect health. Symptoms of insanity unexpectedly manifested themselves, and shortly afterwards, at the age of 32, he was deprived of all mental power, without hope of recovery. Happily for himself and family, he had a few years previously joined the institution, which has in his present position entitled him for life to the allowance just named.

During the year the society has lost five members by death and their families have each received the sum of 50*l.* The death of one of these members took place under most distressing circumstances in a moment of intense nervous suffering. His widow immediately received from the society the sum of 50*l.*, the amount payable on a member's decease, to which his employer, (one of the society's earliest patrons,) added more than an equal sum. To five members whose wives have died during the year, 25*l.* each has been paid. The amount paid on these accounts has been 375*l.* In merely satisfying assurances 2037*l.* 10*s.* has been expended.

Out of the casual fund many gifts have been made to clerks not members, and the widows of such clerks who were in distressed circumstances: 42 applications for relief of this kind have been received during the year; 15 of the applicants were either ineligible or undeserving, the remaining cases received the highest relief

mediate object, is certainly not unimportant as a practical assertion of the right and the willingness of this branch of the profession to express its opinion in regard to the professional conduct of any of its members. The altered, and we venture to add, improved, habits and feelings of society as to the redress of personal injuries, render the establishment of some such tribunal eminently desirable in respect of a body, the members of which are peculiarly exposed to the danger of personal collision. Such a power, judiciously and temperately exercised, would be productive of incalculable advantage to the profession at large as well as to the public. The consciousness that such a power existed and might be exercised could not fail to operate beneficially in a variety of instances, in which the supposed absence of any controlling influence is now too frequently felt and deplored.

We shall not be so much misunderstood as to be supposed capable of desiring to revive any of the disagreeable discussions arising out of the matter which occasioned the Bar meeting, when we venture to remark, that what appears to have been far the most serious and important incident connected with the transaction appears to have been overlooked. In the cause in respect of which this unpleasant altercation arose, the plaintiff's bill was dismissed with costs, without a hearing, in the absence of counsel, although the plaintiff's solicitor had retained and instructed two counsel! This is a matter in which the profession in general and the public are more concerned than in the alleged breach of professional etiquette, or the occasional disregard of the courtesies and amenities which usually do, and should uniformly, characterise the intercourse between the members of a learned and honourable profession. An injustice has been done to the plaintiff, without any default on his own part or that of his solicitor. It has not been considered necessary, however, to make this portion of the transaction the subject of any resolution, or to call for the expression of any opinion upon it. Perhaps another opportunity will be selected for considering this part of the case. The demeanour of those who preside and practise in the courts of justice, however deserving of supervision and control, should never cause us to forget the purpose for which courts are established, judges appointed, and counsel chosen.

the funds enabled the committee to bestow. Four members have received similar assistance, and several others needing temporary pecuniary aid have received it out of the same fund by way of loan. The exact sum advanced is repaid at the convenience of the borrower without charge of any kind. These loans are made to members only; the gifts, to all distressed deserving clerks, whether members or not, and to their widows and families. These disbursements have required a sum of 452*l.*, making the total amount thus expended, 2,285*l.* 19*s.*

The general fund of the society, out of which all the principal benefits are paid, is gradually but satisfactorily increasing. Every claim has been discharged, and a considerable sum added to the invested capital. The receipts of the year have amounted to 2057*l.* 19*s.* 4*d.*, the disbursements to 958*l.* 15*s.* 3*d.*, leaving a surplus of 1099*l.* 15*s.* 1*d.*, which has been added to the investments with the commissioners for the reduction of the national debt. The invested capital on the 20th May, 1846, was 8,564*l.* 3*s.* 7*d.*; on the same day in the present year the amount was 9,810*l.* 3*s.* 5*d.* The importance of these continued additions to the society's capital will be apparent when it is remembered that there are 508 members, and an increase of 8 claims only upon the super-annuation fund alone would entirely absorb the present interest.

The heavy demands upon the casual fund have nearly exhausted it. In April, 1846, there was in hand 142*l.* 18*s.* 3*d.*; 449*l.* 5*s.* 11*d.* has been since received. At the audit in April last the cash in hand only amounted to 48*l.* 10*s.* 8*d.*

The members' contributions during the year have exceeded 1,200*l.*

The committee have great pleasure in announcing that the late Mr. Tidd, who was an annual subscriber, has bequeathed to the society a sum of 100*l.*, duty free.

While, on the one hand, the committee have sought every means of properly increasing the funds, they have promptly satisfied every just claim, and though these have been numerous and varied, no difference has yet arisen upon them. In the distribution of pecuniary assistance to non-members, great care has been taken to assist none but the deserving. The cases of applicants not found to be so, have been invariably rejected. The committee cannot conclude without returning their grateful acknowledgments to the patrons of the society for the support received from them. The desire shown upon all occasions by the profession generally to promote the prosperity of the institution, and increase its means of usefulness, leads to the conviction that that support will not in any way be diminished while the society merits its continuance.

(Signed) H. G. ROGERS, *Secretary.*

#### ANNIVERSARY DINNER.

The 15th Anniversary Dinner of this excellent institution, took place at the Crown and Anchor, Strand, on the 15th day of June. The

Hon. Mr. Justice Erle presided, supported on the right by the Hon. Mr. Baron Platt, on the left by the Solicitor-General. The learned judge was surrounded by numerous members of the different branches of the profession;—amongst the barristers were Mr. J. Addison, Mr. O. Anderdon, Mr. T. C. Anstey, Mr. Ball, Mr. G. F. Carden, Mr. C. Clark, Mr. G. Cochran, Mr. W. T. S. Daniel, Mr. H. Davison, Mr. P. Erle, Mr. Fish, Mr. Fortescue, Mr. J. Locke, Mr. J. L. Lucena, Mr. Shebbeare, Mr. J. Smythe, Mr. T. Southgate, Mr. W. Steere, Mr. J. Stinton, Mr. A. Wallinger, and Mr. J. W. Willcock. The assemblage of attorneys was numerous. We observed Mr. T. Barker, Mr. Boys, Mr. Cooper, Mr. G. Fox, Mr. Davis, Mr. W. Davison, Mr. Druce, Mr. H. Edwards, Mr. Eyre, Mr. Gaines, Mr. Hall, Mr. Helder, Mr. W. Jones, Mr. W. Kewell, Mr. Maugham, Mr. W. Murray, Mr. Neate, Mr. Secondary Potter, Mr. J. Rose, Mr. G. Steel, Mr. C. Tudway, and Mr. J. Watson.

About 300 gentlemen sat down to dinner.

The learned judge introduced the usual loyal toasts with excellent taste, and we need scarcely add, they were warmly responded to.

The Report was then read by the secretary.\*

The learned *Chairman*, in proposing "prosperity to the United Law Clerks' Society," observed, that after the report just read he rose with satisfaction to propose a toast, in which satisfaction every person present would participate. It was most pleasing to see that the society had obtained the permanent position shown by the report. It disclosed, that while temporary distress had been relieved, provision had been made for the claims of future years, when the demands upon the society must necessarily become heavier. He expressed the pleasure he himself felt, and in which he was assured they would all concur, that not only had a large sum been expended in relieving the necessities of non-members and their families, to whom the society generously afforded pecuniary aid, but great prudence had been exercised in the distribution of the relief. This was a most important feature in the management of the institution, and one deserving of high commendation.

The important duties of the clerk were known to all the profession. The prosperity of the attorney was partly owing to the faithfulness, zeal, and ability of his clerks. He took that opportunity of bearing his testimony to the efficient way in which they discharged their duties. He was constantly meeting amongst those who attended before him men of the greatest skill, ability, and diligence, and what was more valuable than them all, the strictest honour in conducting the business of others, men whose conduct showed that they knew there was something more valuable in this life than mere pecuniary profit. It might not be inappropriate

to observe, that institutions like the present had other than pecuniary advantages belonging to them. The members being combined for mutual aid in time of affliction other benefits resulted: each member found he had an interest in benefiting others; that he had an interest in the good character of the other members; and thus the society became an institution of great moral benefit to those who were wise enough to become enrolled among its members. The learned judge concluded a powerful and eloquent address by urging on the members the importance of making provision for the hour of adversity while blessed with health and activity, and expressed a wish that other institutions, having similar objects, might rise in other places and confer on those belonging to them the advantages that had resulted from the one whose anniversary they had met to celebrate.

Mr. Willcock, in proposing the health of the Lord Chancellor, of Lord Lyndhurst, and the other patrons of the society, paid an eloquent tribute to the two distinguished lawyers who had honoured the society by becoming its patrons. He had attended these anniversary meetings for some years past, and it afforded him great pleasure to find that each meeting showed the gradual but steadily increasing prosperity of the society. The learned chairman had most forbiddingly put before the meeting the claims of the society to professional support. One observation of that learned judge was a most important one; that associations for mutual aid in time of affliction were productive of great moral benefit. They led to the production of kindly feeling amongst those who were associated together. The members also became in some degree the sureties for the good conduct of each other. Mutual advice and assistance were thus constantly interchanged, and advantages more solid than pecuniary ones were the result. He thought that the patronage of the profession operated favourably in showing the members that the profession knew how to value probity and ability. They had given substantial evidence of this, and that they had done so had always been a source of high gratification to himself.

Mr. O. Anderdon, in returning thanks, observed that he rose in performance of a duty, not of his own choice, to make the necessary acknowledgments for the kind manner in which the health of the Lord Chancellor, of Lord Lyndhurst, and the other patrons of the society had been received by the meeting. It would have been a waste of time to say a single word in reference to those eminent individuals who had kindly given their sanction to the institution, but for himself he must be permitted to say, that though he must disclaim being deemed one of the patrons, yet he was happy to find himself associated with numerous gentlemen of both branches of the profession as its friends, and he might venture to say there was no more sincere well-wisher for the prosperity of the excellent institution, the anniversary of which they were assembled to celebrate, than the in-

dividual who had the honour to address them. He had listened on former occasions in that hall to many excellent observations as to the value and importance of the institution as expressed by men of distinction and weight in the profession, but upon such topics it was not his intention to enter. Indeed, the address of the excellent and learned person who had so kindly officiated as chairman that evening, an address which must have been truly gratifying and encouraging to those now present, and the effects and influence of which would doubtless extend far beyond those walls, would render it more than unnecessary to do so. It might nevertheless be permitted to him to express his own conviction of the merits of an institution having for its object to promote the welfare of that meritorious body, the law clerks. In his humble judgment, that branch of the profession was entitled to peculiar consideration, having regard to the obstacles which the existing regulations oppose to the advancement of good conduct and talent, and which must surely render the honourable and conscientious discharge of duties confessedly so important the more meritorious. He made free to confess, with all deference, that he could not but regard with regret the existence of such barriers, but whatever might be the opinions on that point, he thought it must be admitted that this very consideration gave peculiar weight to the claims of the society upon the other branches of the profession to which the career of honour and wealth was so widely opened. He ventured to submit that it was no more than a duty, he might almost say an obligation of conscience, on the part of every member of the two branches of the profession, whose talents and exertions under the bounty of providence had won for them eminence and wealth, that some small portion of their success should be reflected upon those whose aid had been so materially contributory to their success. Adverting, then, to the state of the funds of the society as disclosed by the secretary's report just read, and in reference to the extent of the existing claims upon the capital of the society, it seemed proper, considering that the society was yet comparatively in its infancy, to look forward to the future when, with the advance of time and the increase of the society, the growing age and consequent infirmities of its members, must in the course of things greatly and progressively increase the demands on its funds. Now although an important addition had certainly been made in the course of last year to the capital of the society, yet it must not be forgotten that this would bring along with it enlarged claims and liabilities. In this view he was deeply impressed with the great importance of redoubled exertions being made by the friends of the institution in its favour, in order that its truly benevolent and highly useful objects might be extended and made secure, and he would therefore earnestly press upon the profession, and he might even say the public at large, its claim to encouragement and support. He hoped that the highly satis-



factory announcement of the contributions of the evening would prove the earnest of a more extended recognition on the part of the profession at large, and especially its influential members, of the merits of the society, and that each succeeding anniversary might afford the gratifying evidence of the force of such convictions.

In conclusion, he begged to express his most hearty good wishes for the extended success and permanent prosperity of the United Law Clerks' Society. Might it continue to receive patronage and substantial support adequate to its wants and appropriate to its merits!

"The Bench, the Bar, and the Profession" was proposed by *Mr. Stintou*. He concluded he had been called upon to propose the toast in consequence of being one of the oldest members of the bar then present, a privilege which few present would envy him. He felt ashamed to say that it was the first time he had ever the pleasure of joining their party, but he trusted it would not be the last—that the toast he had to propose was of a most comprehensive character, one which must be received by all present with the greatest satisfaction, for there was not one in the room who must not feel that he was interested in it, and that each would have the pleasure of drinking the health of one person, at least, in whom he felt a lively interest. There was one circumstance which had struck him very forcibly since he had been there, and that was the great applause which followed the announcement of a further donation from a learned judge, and that he had great pleasure in bringing to their notice the circumstance that the distinguished person to whom he had alluded was there that day for the third time since he had taken rank as a judge. He had no doubt they well knew to whom he alluded, *Mr. Baron Platt*, one whom, as a barrister they loved, and as a judge they respected; that he mentioned this circumstance as an inducement to others of our judges to follow his example, by affording their presence and support in aid of so excellent an institution; that it must be obvious to all that it was of the utmost importance to increase the funds of the society, and for that purpose he should propose to them a scheme, one which he had on a former occasion suggested to another institution with great effect; and it was this,—that each party then present should make up his mind to procure before they again met in that room one additional subscriber, at least, to the funds; the advantage of such resolution, if followed out, was clear, it would probably have the effect of nearly doubling the fund, and the effect would not cease with the year, but would be continued to a certain extent in after years—that he would enter into a contract with them, with all and every one then present, that he would endeavour by every means in his power to procure such an additional subscriber, and that they should one and all undertake to adopt the same course; and he concluded by again proposing the toast, "The Bench, the Bar, and the Profession."

*Mr. Baron Platt* replied in a speech of great

eloquence. He stated he felt much pleasure in countenancing institutions like the present. He had evidenced that by thrice attending there. He was gratified in finding that the bench, the bar, and the profession patronized in word and deed so useful a society. They would always continue to do so. It afforded him much pleasure when he heard that that great lawyer the late *Mr. Tidd* had shown his favourable regard to the society as mentioned in the report, that kind and able man who had been the master of *Lord Lyndhurst*, *Lord Campbell*, and others equally eminent in the profession, and had formed some of the greatest legal minds in this country, was always considerate and kind to the humblest members of the profession, and at the close of a long and laborious life had shown the benevolence of his disposition in remembering all the useful associations of that body of which he was so distinguished an ornament. *Si quis piorum manibus locus; si, ut sapientibus placet, non cum corpore, extinguuntur magnæ animæ placidè quiescas, nosque, domum tuam, ab infirmo desiderio et muliebribus lamentis ad contemplationem virtutum tuarum voces, quas neque lugeri neque plangi fas est.*

*Mr. Locke*, in proposing "the Honorary Stewards," regretted that he should have been selected to propose that toast, as he observed so many gentlemen present much better qualified than himself to discharge that duty; though he would yield to none in an anxious desire to forward the interests of the United Law Clerks' Society. The toast which he had to propose included some of the most eminent lawyers of the day, and indeed in that list were to be found the names of distinguished members of every branch of the profession. The duties which the honorary stewards had to perform were indeed nominal, still the society was deeply indebted to them; for it was productive of much benefit and a great satisfaction to see in each succeeding year lists of honorary stewards sent forth to the public, such as could not fail to confirm the belief now so generally entertained, that the society had the cordial support of the profession at large. It was extremely gratifying to him to find the learned *Baron Platt* again taking his place at that table; and he might be allowed, as a member of the circuit which his lordship had so long adorned, to pay his humble but sincere tribute to his merit; and to tell those who might not have had the same advantage and means of appreciating that learned judge's character with himself, that during his long and successful practice on the circuit he had shown uniform kindness to every member of the body. It was pleasing to see the learned judge in his exalted position thus forwarding the objects of a society which was calculated to promote the interests of a most deserving branch of the profession, to whom he (*Mr. Locke*) begged to offer his testimony of the estimation he entertained of the mode in which they discharged their laborious duties. The part performed by others might be of a more

brilliant character; yet, without the exertions of the law clerks, all business must stagnate, no step could be taken, no advance could be made, and from their honesty and integrity society derived more benefit than from the career of the most successful advocate. It was his earnest hope that upon the next anniversary names even more distinguished, and, if possible, better calculated to advance the objects which all were met to further, might be found to adorn the list of honorary stewards, and thus afford a still stronger guarantee for the well being and progress of so praiseworthy and meritorious a society.

Mr. T. Smythe returned thanks in the name of the honorary stewards. He could not help observing that he considered a great obligation was due to the actual stewards; he stated that nothing which could have been said had been left untouched by the distinguished chairman, and he should not attempt to repeat what had been so well said by him already. Appearing for such a body as he had the honour to represent, he felt diffident in conveying their sentiments towards the society in language of his own; he should take the liberty, therefore, of adopting the language of their distinguished patron, Lord Cottenham, with the necessary alteration, as the fittest expression of the sentiments of the honorary stewards, and it was this: "We beg to assure the members of the society that it will always give us pleasure to patronize in *fact* as well as in *form* a society which has for its object to enable industrious members of the profession to make provision for themselves and their families;" and he trusted the society would never fail in obtaining the countenance and support of the classes to which he belonged.

In proposing "the health of the trustees," Mr. Ansley reminded the meeting that under the management of those gentlemen their affairs had greatly prospered; that for more than fifteen years their connexion with the institution had subsisted; that it began before the foundation was complete; that in common with the other founders they stood forth when success was doubtful to bear the hazard of the enterprise; that they had ever since taken the deepest interest in its welfare; that an unforeseen engagement accounted for the absence of the one, whilst the other had retired from the profession; that the actual prosperity of the society was the best proof that could be given of their continuing interest and solicitude, a prosperity so great as almost to justify the words of Mr. Hatton's excellent new song, which, with a pardonable exaggeration, thus describes their abundance.

"Of sack and canary he never doth fail,  
And all the year round there is brewing of ale."

However, this actual prosperity must not be abused, neither must they suffer the appearance of permanence to seduce them into a neglect of those means which alone could secure it. But on this head he would not enlarge, not having any thing to add to the

prudent advice they had heard from Mr. Anderson, nor being able to improve upon the good and practical plan recommended by his friend Mr. Stinton.

The last toast, "The health of the Chairman," was proposed by Mr. Baron Platt, who observed, that the Solicitor-General being obliged to leave for the House of Commons, had requested him to propose that toast. In doing so, he felt some difficulty, as the known dislike of that learned judge for all public commendation prevented him doing justice to it. His conduct, as a member of the bar and the bench, had earned him the good opinion of all men. The ability with which he had presided that evening had shown the members how heartily he entered into the desire of those present to promote the welfare of the institution. He could not forget that when he (the learned baron) last year asked their chairman to preside on the present occasion, his consent was cordially and instantly given. The interest he took in promoting the prosperity of the society was manifest to all, from the manner in which he had discharged his duties that evening.

The Chairman returned thanks, expressing the gratification he had felt in being assured that his presence there had been of service to the institution.

The donations announced exceeded £320. This did not, of course, include the legacy left by Mr. Tidd, as mentioned in the Report.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### Common Law Courts.

#### LAW OF NISI PRIUS.

##### AGREEMENT.

*Sec Trade Fixtures.*

##### ARREST.

*Sec Barrister.*

##### AMENDMENT.

Several brothers and sisters divided certain property between them at their mother's death, supposing it to have been hers, and verbally allotted a house to a sister. The property really had been their deceased father's: *Held*, in ejectment by the father's devisee, (one of those brothers,) that he could not recover without a demand of possession; and the demand of possession being after the day of the demise, the judge would not allow an amendment by altering the day of the demise, as the arrangement was equitable. *Doe d. Loscombe v. Clif-ford*, 2 C. & K. 448.

And see *Variance*.

##### BARRISTER ON CIRCUIT.

*Capias ut lagatum.*—*Privilege from arrest.*—A barrister of the Home Circuit had attended the assizes at Hertford and at Chelmsford,

which latter assizes had ended on Friday the 6th of March. On Monday, the 9th of March, the commission-day at the next town, (Maidstone), but before the commission was opened there, he was arrested at his own house, six miles from London, on a *capias ut lagatum*, he having retainers at Maidstone: *Held*, that he was entitled to be discharged as being a barrister on the circuit.

*Semble*, that for this purpose a *capias ut lagatum* is to be considered as civil process. *The case of the Sheriff of Kent*, 2 C. & K. 197.

#### BILL OF EXCHANGE.

*Plea of non assumpsit*.—In assumpsit on a bill of exchange by indorsee against acceptor, the defendant pleaded *non assumpsit* *Held*, that the cause could not be tried on this plea, and the jury being sworn, the plaintiff took a verdict for the amount of the bill and interest, without adducing any evidence, and without putting in the bill. *Neale v. Proctor*, 2 C. & K. 456.

#### BREACH OF PROMISE OF MARRIAGE.

*Costs*.—*Certificate under 43 Eliz. c. 6, s. 2*.—The statute 43 Eliz. c. 6, s. 2, which authorizes the judge to grant a certificate to deprive the plaintiff of costs where less than 40s. damages are recovered is still in force as to actions on promises, *e. g.*, in actions for breach of promise of marriage. *Townsend v. Symes*, 2 C. & K. 381.

#### BREACH OF CONTRACT.

*Quantum meruit*.—In an action for work and labour, where there had been a breach of contract on the part of the plaintiff: *Held*, that, under the *common counts*, he could not recover a *quantum meruit*, nor prove that his breach of contract arose from the defendant's default. *Kewley v. Stokes*, 2 C. & K. 435.

See *Contract*.

#### BROKER.

*Contract*.—*Liverpool Stock Exchange*.—If a broker enter into a contract for an undisclosed principal, the latter may sue on such contract in his own name; and a rule of the Exchange on which the contract was made, which declares that a contract made by a broker for an undisclosed principal shall be regarded as the contract of the broker only, does not control this right, even although the principal was cognizant of such rule. *Humphrey v. Lucas*, 2 C. & K. 152.

#### BUILDING.

*Right to have support from adjoining land after twenty years*.—*A. and B.* were the owners of adjoining lands, and the house of *A.* had for more than twenty years been supported by the adjoining land of *B.*, who dug a foundation for some intended buildings so near the house of *A.* that it fell: *Held*, that if *A.*'s house had been so supported, and both parties knew it, the plaintiff had a right to such support as an easement, and that the defendant could not withdraw that support without being liable in damages for any injury that the plaintiff might

sustain thereby, which damages should be such as to put the plaintiff in the same state in which he was before, but the jury ought not to give him a new house for an old one. *Hide v. Thornborough*, 2 C. & K. 250.

See *Landlord and Tenant*.

#### CARGO.

1. *Contract for goods by a particular ship*.—*Inspection*.—*Delivery*.—Where a party buys a specific cargo of goods, expected by a particular ship, and which are warranted to be a particular quality, he has a right, on the arrival of the ship, to inspect such cargo before it is delivered to him, in order to ascertain whether the warranty has been complied with; and if it have not, he may reject the cargo altogether. But if the cargo be once delivered to him, he has no right to return it, on the ground that it does not correspond with the warranty. Where the court were of opinion, that the direction of the learned judge who tried the cause, though in terms correct, might still have been misunderstood by the jury, they granted a new trial. *Toulmin v. Hedley*, 2 C. & K. 157.

2. *Commission*.—*Course of dealing*.—By an agreement between an African merchant and an African captain, the latter was to have a commission of "6l. per cent. on the *net proceeds* of the homeward cargo, after deducting the usual charges:" *Held*, that parol evidence was not admissible to show that under this kind of contract, according to the course of dealing between African captains and African merchants, the captain was entitled to his commission on the whole amount for which the cargo had been sold, and not merely on the net sum that had come to the hands of the merchant as the result of that sale. *Caine v. Horsefall*, 2 C. & K. 349.

#### COMPETENCY OF WITNESS.

6 & 7 Vict. c. 85.—A witness in an action brought to recover certain commission or brokerage stated, on the "*voir dire*," that he had a claim to one moiety of whatever commission the plaintiff should receive: *Held*, that the evidence of the witness was admissible under 6 & 7 Vict. c. 85, (Lord Denman's Act.) *Hill v. Kitching*, 2 C. & K. 278.

#### CONTRACT.

1. *Declaration*.—*Materiality*.—In assumpsit for the price of, and the setting up of, a "fourteen horse-power steam-engine, the last instalment to be paid two months after its completion," it appeared that the degree of power in the engine delivered was not equal to the power mentioned in the contract, and improvements and alterations were made by the plaintiff from time to time till the action was brought: *Held*, 1st, that common counts would lie; 2ndly, that the term "completion" did not apply to the mere making of improvements and alterations; 3rdly, that the degree of power of the engine was a material part of the contract. *Parsons v. Saxter*, 2 C. & K. 266.

2. *Mutuality*.—Where *H.* contracts to fur-

nish *R.* with a reasonable quantity of work, at a fixed rate of wages, and *R.* is bound not to work for any other person or persons for a period of seven years : *Held*, that there is a mutuality of contract implied, and that *H.* would be bound to furnish work for the whole period of seven years. *Hartley v. Cummings*, 2 C. & K. 433.

And see *Broker ; Cargo ; Landlord and Tenant*.

#### COPYRIGHT.

*Contemporaneous publication abroad*.—In an action for infringement of a copyright in a foreign work, there was a contemporaneous publication abroad and in this country : *Held*, that, notwithstanding, plaintiff was entitled to recover. *Cocks v. Purday*, 2 C. & K. 269.

#### COSTS.

See *Breach of Promise ; Landlord and Tenant*.

#### CUSTOM OF TRADE.

See *Freight*.

#### DAMAGE FEASANT.

See *Trover*.

#### DEMISE.

See *Landlord and Tenant*.

#### DETINUE.

See *Railway*.

#### ESCAPE.

*Sheriff*.—In an action for an escape against a sheriff, where the prisoner was brought up to London from the country, in obedience to a warrant issued by a commissioner of bankruptcy, and permitted to remain there three days, though remanded back by the learned commissioner, (one of them, however, being a Sunday, and another a day appointed for the prisoner to appear before a judge at chambers, by virtue of a writ of *habeas corpus*), and to repair from place to place attended by the jailor : *Held*, that the above-mentioned facts did not constitute an escape in contemplation of law. *Hill v. Kitching*, 2 C. & K. 280.

#### EVIDENCE.

*Marriage*.—In an action of debt for goods sold, in which the defendant pleads her coverture, and the plaintiff in his replication denies the coverture, the person who is alleged in the plea to be the husband of the defendant, is not a competent witness for the defendant to prove his marriage with her.

On this issue, proof that the defendant and the person alleged in the plea to be her husband, have cohabited together as husband and wife for four years, is some evidence of the marriage, which the judge will leave to the jury. *Woodgate v. Potts*, 2 C. & K. 457.

And see *Secondary Evidence ; Seisin*.

#### FIXTURES.

See *Trade Fixtures*.

#### FOREIGN LAWS.

*Mode of proving*.—A witness expert in the

law of a foreign country, was called to prove what that law was : *Held*, that he should state on his own responsibility what the law was, and not read any fragments of a code. *Cocks v. Purday*, 2 C. & K. 269.

#### FREIGHT.

1. *Custom of Trade*.—*Tender*.—The custom of the Caen stone trade being to pay freight, half in cash and half by a bill at two months, the agent of the owners of Caen stone, which was brought by a vessel to an English port, verbally offered the captain of a vessel which brought it, half the amount of the freight in cash, and also offered to give the captain *per proc.* the acceptance of the principal for the other half, if the captain would draw a bill. This the captain refused : *Held*, a sufficient tender of the freight, as it was the duty of the captain to draw the bill. *Luard v. Butcher*, 2 C. & K. 29.

2. *Principal and Agent*.—The captain of a ship was instructed to apply for a cargo to *A.* ; and, in the event of *A.* not being on the spot, then to apply to *B.* (both being agents of the charterers) for the same purpose. He applied to both accordingly, and was refused a cargo by both. An action was brought by the owners to recover the freight, and, in order to do away with the effect of the proof as to *B.*'s refusal, a letter from *B.* to the defendants was tendered in evidence, to show, that prior to such refusal, *B.* had renounced their agency : *Held*, to be inadmissible.

*Held*, further, that *A.* having been on the spot, what passed between *B.* and the captain was important only in so far as it was confirmed and adopted by *A.* *Hassell v. Watson*, 2 C. & K. 141.

#### GUARANTEE.

See *Landlord and Tenant*.

#### HORSE.

See *Warranty*.

#### HUSBAND AND WIFE.

1. *Allowance paid to wife*.—If husband and wife be living separate and apart, and the husband make the wife a regular allowance of a sufficient sum for her maintenance, which is regularly paid, this is sufficient to repel the inference of agency, and he is not liable for any debt she may contract ; and it is not necessary that there should be any deed of separation ; but the allowance must be such as the jury shall think sufficient, reference being had to the station of the parties and the income of the husband. *Holder v. Cope*, 2 C. & K. 437.

2. *Allowance paid to wife*.—If husband and wife be living apart, and the husband makes the wife a sufficient allowance for her support, he is not liable to an action by a tradesman for goods supplied to her, and it is immaterial whether the tradesman knew of such an allowance or not.

If a wife living apart from her husband orders goods to be addressed and sent to a third person, and they be sent to the house of such

third person, that not being the place of abode of the wife, the husband is not liable to pay for those goods. *Reeve v. Marquis of Conyngham*, 2 C. & K. 444.

#### INTERPLEADER.

*Speedy execution.*—Where goods have been taken under a *fi. fa.*, and an issue is directed to try whether the goods were those of a third person, and on that issue the jury at the assizes find for such person who is plaintiff in the issue, the practice is for the associate to keep the *nisi prius* record till after the fourth day of the next term, unless the judge orders it to be immediately delivered up to the plaintiff's attorney upon an application in the nature of an application for speedy execution. *Abbott v. Clarke*, 2 C. & K. 209.

#### LANDLORD AND TENANT.

1. *Contract to build houses.*—Where a contract was made by plaintiff and one H., that H. "should build certain houses on plaintiff's land, and procure tenants for the same at a given rate, and himself pay the rent till he so procured tenants, from the Michaelmas then next ensuing." *Held*, that, under the contract, no tenancy was created between plaintiff and H. *Taylor v. Jackson*, 2 C. & K. 22.

2. *Contract.—Guarantee.*—An indorsement, written and signed after the agreement to which it was annexed, purported to guarantee the performance of the covenants and conditions of that agreement, but there was evidence to show that the guarantee was from the first agreed on between the parties: *Held*, that the agreement and subsequent indorsement formed but entire contract, and that, therefore, the latter did not require a separate consideration. 2ndly, It being part of the agreement that the plaintiff should pay the first instalment of a certain sum on a given day: *Held*, that a *verbal* agreement to postpone the day was sufficient. 3rdly, It being one of the covenants in the agreement that the landlord of a certain public-house would accept the plaintiff as tenant, the declaration alleged that the landlord had refused so to accept him: *Held*, that the plaintiff was not required to prove that the individual who acted as the landlord was the real owner of the premises or his authorised agent. *Coldham v. Showler*, 2 C. & K. 261.

3. *Notice to quit.*—Where a tenant is entitled to six months' notice to quit, a notice to quit "at the expiration of the present year's tenancy" is sufficient, although it does not appear on the face of it that it was given six months before the period therein specified for quitting. *Doe d. Gorst v. Timothy*, 2 C. & K. 351.

4. *Demise.—Surrender.*—In an action by A. against B. for rent on a demise from quarter to quarter, with the rent payable one quarter in advance, the defendant pleaded as denial of the demise, a notice to quit, and a surrender by operation of law. A written agreement for this purpose, whereby letting, made while the stat. 7 & 8 Vict. c. 76, s. 4, was in force, was put in, which was signed by B. but not by A.: *Held*,

that this was evidence of a parol demise by A., and that it was put an end to by a parol notice to quit. *Bird v. Defonvielle*, 2 C. & K. 415.

5. *Profitable occupation.*—If a tenant have left a house unoccupied, and the landlord enter and be in the profitable occupation of the house, he cannot recover rent from the tenant for any time after such profitable occupation; but if he merely puts a person into the house to take care of it and prevent depredations, it would be otherwise. *Bird v. Defonvielle*, 2 C. & K. 415.

6. *Acquittal of co-defendant.—Costs.—Certificate.*—In an action of trespass against three who had all jointly and by one attorney pleaded not guilty, "by statute," the judge at *nisi prius* would not, on the application of the plaintiff's counsel just before the jury was sworn, allow a *nolle prosequi* to be entered as to one of the defendants, in order that he might be called as a witness for the plaintiff. Neither would the judge, immediately after the jury were sworn, allow one of the defendants to be acquitted on the application of the plaintiff's counsel, it being stated by the defendant's counsel that he appeared for all the defendants, and objected to such acquittal.

If, in an action of trespass against several defendants, there be at the end of the plaintiff's case no evidence against one of the defendants, it is in the discretion of the judge whether such defendant shall be then acquitted; and if from the nature of the evidence given for the plaintiff, it is probable that evidence which will be given for the other defendants will fix this defendant with liability, the judge will not allow his acquittal at the end of the plaintiff's case.

In trespass for taking goods, the defence under the stat. 11 G. 2, c. 19, s. 3, that the goods had been seized after having been fraudulently removed to prevent a distress for rent, cannot be gone into unless specially pleaded; but where, in trespass against a landlord and his broker for taking goods, there was no evidence against the landlord, and this defence was opened but could not be gone into, as not guilty "by statute" was the only plea, the judge would not certify, under the stat. 8 & 9 W. 3, c. 11, s. 1, that there was reasonable cause for making the landlord a defendant, in order to deprive him of his costs. *Spencer v. Harrison*, 2 C. & K. 429.

#### MAGISTRATE.

*Action.—Venue.*—An action against a magistrate for an act done by virtue of his office is a local action; and therefore, if (since the division of the county of Lancaster, by virtue of the 3 & 4 W. 4, c. 71, s. 4), the venue in such action be laid in the southern division "of that county," but it appears that the cause of action arose in the "northern division," the defendant will be entitled to a verdict thereof, under the 21 Jac. 1, c. 12, s. 5. *Atkinson v. Hornby*, 2 C. & K. 335.

#### "MONTH."

In legal matters "a month" means a lunar

month; but in commercial matters "a month" is part heard. *Sturm v. Jeffree*, 2 C. & K. 442. means a calendar month. *Hart v. Middleton*, See *Secondary Evidence*. 2 C. & K. 9.

## NOTICE TO QUIT.

See *Landlord and Tenant*.

## OCCUPATION.

See *Landlord and Tenant*.

## OWNERSHIP.

*Assumpsit*.—In *indebitatus assumpsit* for goods sold and delivered, the defendant cannot show, under the plea of *non assumpsit*, that at the time of the sale, the goods sold did not belong to the vendor, and that they were afterwards reclaimed by the real owner. *Walker v. Mellon*, 2 C. & K. 346.

See *Trover*.

## PARTICULARS OF DEMAND.

*Payment credited*.—If a plaintiff, in his particulars of demand delivered in the cause, do not give credit for any sum paid by the defendant, but in it refer to "full particulars" already delivered, and those full particulars do give credit for a sum paid by the defendant, this will not dispense with the necessity of the defendant pleading such payment, and if it be not pleaded, the defendant cannot avail himself of it at the trial. *Hart v. Middleton*, 2 C. & K. 9.

## PRINCIPAL AND AGENT.

*Agreement for sale of goods*.—An auctioneer entered into an agreement on behalf of A., to sell certain premises to B., without having communicated to A. that B. was in treaty for such premises. A. had himself previously sold the premises to another party, and therefore could not fulfil the contract so made upon B.; whereupon B. sued A. for non-fulfilment of his contract: *Held*, that under these circumstances, B. was not entitled to recover damages for the loss of his bargain. *Tyrer v. King*, 2 C. & K. 149.

Case cited in the judgment: *Walker v. Moore*, 10 B. & C. 416.

And see *Freight*.

## PRIVILEGE.

See *Barrister*.

## PRODUCTION OF PAPERS.

*Notice to produce*.—A cause at the sitting at *nisi prius* was called on upon Thursday the 4th of February, and the plaintiff's case was closed on that day at 4 P.M.; the case was then adjourned to Friday the 5th February, at 10 A.M. All the parties lived in town, and in the evening of the 4th Feb., before 9 P.M., a notice to produce a letter of the defendant to the plaintiff was served on the plaintiff's attorney: *Held*, that this notice to produce was served in time.

*Held* also, that if a party is served with a notice to produce sufficiently early for him to be enabled to produce a document, if he thinks proper to do so, it makes no difference that, at the time of the service of the notice, the cause

## RAILWAY COMPANY.

1. *Purchase of lands*.—Application for abstract of title.—A railway act enacted, with reference to the purchase of lands by the company, that if the owner of any such lands should "fail to make out a title to the land in respect whereof such purchase-money or compensation should be payable," the company should deposit the purchase-money in the bank; and that thereupon all interest in the lands in respect whereof such purchase-money should have been deposited, should vest in the company: *Held*, that in order to enable the company to avail themselves of this provision, they must have previously applied to the owner of the lands to furnish them with an abstract of his title thereto. *Doe d. Hutchinson v. Manchester Railway Company*, 2 C. & K. 162.

2. *Scrip*.—*Detinue*.—*Damages*.—Where defendant, after signing an acknowledgment that certain scrip had been "lodged in his hands" by plaintiff, and was to be delivered to him on request, wrongfully detained the scrip for a considerable time, so that its market value had much diminished, and did not re-deliver it until after action brought. *Held*, that the action was rightly brought in detinue, as the "lodged" implied that the identical scrip was to be returned; and also, that plaintiff was entitled to more than nominal damages.

On the second point a bill of exceptions was tendered.

But where the plaintiff suffered loss by the detention, in this, that he was thereby deprived of the means of paying up his deposits, which would have entitled him to claim an allotment of 100 shares: *Held*, that the damage was too remote, and plaintiff could not recover. *Archer v. Williams*, 2 C. & K. 26.

3. *Provisional committee*.—In an action against railway provisional committee-men, under contracts entered into by the committee, *Held*, that to render defendants liable, it was necessary to prove, not only that they were members of the committee, but that they knew it to be still in operation, and also that the expenses incurred were reasonable and usual. *Barrett v. Blunt*, 2 C. & K. 271.

4. *Allotment of shares*.—In an action to recover the amount of deposit-money paid on certain railway shares, the prospectus of the railway company setting forth that 120,000 shares would be issued: *Held*, 1st, that the allotment of only 58,000 shares was a breach of contract, and that the plaintiff was entitled to recover on that ground; 2ndly, that if it was agreed that the company should go on with the smaller number of shares, that was virtually a new contract from which any individual shareholder might withdraw. *Wontner v. Shairp*, 2 C. & K. 273.

5. *Scrip*.—In order to prove that scrip has been called in by a joint-stock company, to be registered under 8 Vict. c. 16, s. 9, it is not sufficient to call the clerk of the brokers who

sent them it for that purpose, unless he produce the scrip itself; and *Semble*, that some one from the office of the company itself should be called to prove that the company did in fact call in the scrip. *McEwen v. Woods*, 2 C. & K. 330.

6. *Shares*.—*Bought note*.—*Stamp*.—A bought note for the purchase of railway shares, signed by the broker of the purchaser, is not a "memorandum, letter, or agreement, made for, or relating to, the sale of goods, wares, or merchandises," within the 4th exemption in the Stamp Act, 55 G. 3, c. 184. *Knight v. Barber*, 2 C. & K. 333.

#### RIGHT TO BEGIN.

In an action of debt for goods sold, in which the defendant pleads her coverture, and the plaintiff in his replication denies the coverture, and there is no other issue, the defendant must begin. *Woodgate v. Potts*, 2 C. & K. 457.

#### RIGHT TO REPLY.

Where counsel for a defendant opens facts to the jury, but does not go into any evidence, the counsel for the plaintiff has not an absolute right to reply, but it is in the discretion of the judge: the object of allowing a reply in such cases being, that injustice should not be done by facts being improperly opened when the defendant's counsel has no intention of proving them. *Naish v. Brown*, 2 C. & K. 219.

#### SALE OF GOODS.

*Readiness to deliver*.—The plaintiff's declared on a contract by the defendants to purchase certain iron of the plaintiffs, alleging a promise by the defendants "that if the delivery of the said iron should not be required by the defendants on or before the 30th day of April, 1845, the said iron was to be paid for by the defendants on the day and year last aforesaid;" and averring that the plaintiffs had always been ready and willing to deliver the said iron in terms of the contract; that the 30th of April was past before the commencement of the suit; but that the defendants had not paid for the iron: *Held*, first, that under the averment of readiness and willingness to deliver the iron, the plaintiffs were not bound to show that any specific iron had been appropriated by them for that purpose; and secondly, that the plaintiffs were entitled to recover on the above contract the full price of the iron, and not merely the damages which they had sustained by the defendants' breach of contract. *Dunlop v. Grote*, 2 C. & K. 153.

And see *Principal and Agent*.

#### SECONDARY EVIDENCE.

*Memorial of registry in Middlesex*.—*Demand of possession*.—If a deed be in the possession of a third person as mortgagee, and he having the deed in court, though not subpoenaed in the cause, decline to produce it, secondary evidence may be given of its contents; but if the deed is not in court, and he has not been subpoenaed to produce it, it is otherwise.

The person thus declining to produce a deed

must not state its contents, but he must state the date of the deed and the names of the parties, in order to identify it.

An examined copy of a memorial of a purchase deed registered in Middlesex under the stat. 7 Anne, c. 20, is only receivable as secondary evidence of the deed against the parties to the deed and all persons claiming under them; and the fact that A. mortgaged the property to B., and delivered this deed to B. as mortgagee, is not sufficient to make it secondary evidence against A. *Doe d. Loscombe v. Clifford*, 2 C. & K. 448.

#### SEISIN.

*Evidence*.—In ejectment, evidence that the shutters of the house claimed were repaired, and a wash-house built on the premises, and that this was paid for by W. L., is evidence to go to the jury of the seisin of W. L. *Doe d. Loscombe v. Clifford*, 2 C. & K. 448.

#### SHERIFF.

See *Escape*.

#### SLANDER.

*Meaning of words as understood*.—In an action for slander, the words were, "You are a thief; you robbed Mr. L. of 30l." The words were spoken in the hearing of B. and of several strangers. B. knew that the words did not mean to impute felony, but meant to impute that the plaintiff had improperly obtained 30l. from Mr. L. to compromise an action for a distress: *Held*, that, under these circumstances, the question to be left to the jury was not what the defendant meant by the words he spoke, but what reasonable men, hearing the words, would understand by them.

*Semble*, also, that if all the persons present when the words were spoken had known that the words did not impute felony, that would have been an answer to the action. *Hankinson v. Biley*, 2 C. & K. 440.

#### SPEEDY EXECUTION.

See *Interpleader*.

#### STOCK EXCHANGE.

See *Broker*.

#### TAXES.

See *Tender*.

#### TENDER.

*Parliamentary Taxes*.—A. demanded 20l. as rent due from B.; and B. having claimed certain deductions which A. would not allow, then put down 20 sovereigns, and said, "I tender you 20l. under protest:" *Held*, a good tender, as this was not a conditional tender, the words "under protest" merely importing that B. did not acquiesce in the demand of A., and did not mean to preclude himself from recovering the money back again if he could.

The land tax is a "parliamentary tax" within the meaning of an agreement to pay rent "and all taxes parliamentary and parochial." *Manning v. Lunn*, 2 C. & K. 13.

And see *Freight*.



## TRADE FIXTURES.

**Parol agreement.**—A reversionary interest in trade fixtures will pass to a purchaser under a parol agreement. *Petrie v. Dawson*, 2 C. & K. 138.

## TROVER.

1. **Damage feasant.**—*Seemle*, that an animal doing damage to the freehold is doing such a damage as will justify the distraining of the animal *damage feasant*, provided that the animal be then actually doing the damage, or having done some damage, it is necessary to detain the animal to prevent it doing further damage.

But if the owner of the freehold seize an animal which has done damage to the freehold, but which has ceased doing so, and it be not necessary to detain the animal to prevent further damage, and the owner of the freehold detain the animal and feed it for several days, and then sell it for its full value, the owner of the animal is entitled in trover to recover the full value of the animal, without any deduction for the feeding, as the owner of the freehold seized the animal in his own wrong. *Wormer v. Biggs*, 2 C. & K. 31.

2. **Ownership.**—In an action of trover, where the plaintiff had been endeavouring to baffle his creditors by a merely ostensible transfer of the goods to another, and where they were seized upon premises in which the plaintiff's tenancy had expired: *Held*, 1st, that there was a sufficient possession as against a wrong doer, without regard to the question of ownership; and 2ndly, that the measure of damages was the value of the plaintiff's real and *bond fide* interest in the goods, and not the full value. *Cameron v. Wynch*, 2 C. & K. 264.

## VARIANCE.

**Amendment.**—The enactments for allowing amendments at *nisi prius* were intended to meet variances arising from mere slips or accidents, and do not extend to a case in which the party has intentionally and designedly framed his pleading in a manner which gives rise to the objection. Thus, if a plaintiff declaring on a deed recites it according to what he contends is its legal effect, and the judge should hold that that is not the legal effect of the deed, this would not be such a variance as should be amended at *nisi prius*. *Bowers v. Nixon*, 2 C. & K. 372.

See *Amendment*.

## VENUE. \*

See *Magistrate*.

## WARRANTY OF A HORSE.

**Unsoundness.**—Where a horse is warranted "sound," the plaintiff cannot recover in an action on that warranty, unless he show that the horse was unsound at the time of the sale: and mere defective formation, not producing lameness at that time is not an unsoundness within the meaning of the warranty. *Bailey v. Ferrest*, 2 C. & K. 131.

See *Brown v. Elkington*, 8 M. & W. 132; *Dickenson v. Follett*, 1 M. & R. 299; *Coates*

*v. Stevens*, 2 M. & R. 137; *Kiddell v. Burnard*, 9 M. & W. 668.

## WITNESS.

See *Competency*.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

## Lord Chancellor.

*Dunning v. Hards*. July 7, 1847.

## CONTRIBUTION IN CREDITORS' SUITS.

*The general rule that creditors proving their debts under a decree in a creditor's suit, must contribute their proportion to the costs of the suit, does not extend to such costs as are incurred by the plaintiff in investigating and establishing a special and peculiar claim.*

Mr. J. Russell and Mr. Southgate stated, that this was an appeal from a decree by Vice-Chancellor Knight Bruce, directing, as usual in a creditor's suit, that all persons who should come in and prove their debts under the decree should contribute to the expenses of the suit. The learned counsel submitted that such direction should be confined to the costs incurred in the ordinary administration of the assets; whereas in the present case the bill alleged matter and prayed relief, which specially and peculiarly affected only the plaintiff. It stated that the plaintiff was entitled to an annuity arising from the sum of 250*l.* bequeathed in trust to one James Hards, deceased, who had never invested the sum, but had paid the interest of it until his death, and had also insured the life of the annuitant to that amount. The bill which was filed against the executors of the said J. Hards, was in the nature of a creditor's bill, but also alleged sundry breaches of trust on the part of the deceased, in respect of the said sum of 250*l.*, and prayed that it might be declared that he had appropriated the said policy to the satisfaction of the said annuity and trust fund, which was declared accordingly by his Honour on the decree now appealed against. There was no evidence that the deceased intended to or had in fact so set apart the policy, and his assets were not sufficient for the specialty debts.

Mr. Roll and Mr. Craig maintained, that it was the usual direction in a creditor's suit, that all persons deriving any benefit from it should contribute to the expense. There might be some peculiarity in the present bill, but still the parties appearing would derive a benefit from it, and it would be difficult to apportion their respective contributions. It was quite clear that the accounts must be taken. *Larkins v. Paxton*, 2 Myl. & K. 320. With respect to the appropriation of the policy, it was impossible to doubt the intention of the deceased, as he had no insurable interest in the life of the plaintiff, otherwise than for the purpose of being

provided with the funds which would become devisable among her children when she should die.

The Lord Chancellor said, there was no evidence whatever to support the Vice-Chancellor's declaration, that the policy had been so appropriated as contended, but he thought it was a very possible and reasonable supposition, that such was the intention. He would, therefore, direct an inquiry into the facts before the Master, but it must be at the costs of the plaintiff seeking it. His Lordship was not disposed to disturb the usual practice of the court in respect to the direction to contribute towards the expense of the suit, but as the bill, although partly a creditor's bill, sought other relief peculiar to the plaintiff, he thought the contribution should not extend to the costs of the claim affecting the above-mentioned policy, but should be varied accordingly.

#### Vice-Chancellor of England.

*Gowar v. Bennett.* July 3rd, 1847.

#### ACTION OF EJECTMENT.—RECEIVER.

*Where a receiver is in possession of leasehold property, and an action of ejectment is brought by the tenant in fee against the tenants in possession, the court will allow the action to proceed, provided there has been no wilful contempt committed by the party bringing the action.*

A SUIT had been instituted in this case for the administration of the estate of a testator who was tenant of certain leaseholds held of the Churchwardens of St. Andrew's, Holborn, they being the tenants in fee. In the course of the proceedings in the suit, in December, 1843, a receiver was appointed. The executors of the testator were now the lessees of the churchwardens, and various under-lessees being in possession of the property, and the same being in a very dilapidated condition, the churchwardens commenced an action of ejectment against them, and declarations were served in May last, and a rule obtained in the action.

Mr. R. Palmer now moved that the churchwardens might be at liberty to prosecute their action, notwithstanding the appointment of a receiver, and he contended that the churchwardens, as well as their solicitor, were ignorant of the fact of a receiver being appointed before the action was commenced; and that, although the rents had been paid to the collector of the churchwardens, and receipts were then signed by the receiver, it did not appear that he signed them in the character of receiver; and that if the collector knew of it, he never informed the churchwardens; and he cited the case of *Angel v. Smith*, 9 Ves. 335, as directly in point.

Mr. Bethell and Mr. J. H. Palmer, contra, contended, that the churchwardens must be taken to have had notice of the receiver, and that in proceeding with their action they had committed contempt of court just as much as if they had disobeyed an injunction; and they

submitted that the court was bound not to allow the action to proceed; they cited *Evelyn v. Lewis*, 3 Hare, 472.

The Vice-Chancellor said, it did not appear to him that the proceedings had been commenced in contempt of court. The question was, whether when a party asked for leave to go on with the proceedings he should not have leave. Lord Eldon, in the case in Vesey, gave leave, and the present was a similar case. He thought there had been nothing committed here so contemptuous as to induce the court to put a stop to the action. The parties appeared in a certain sense to have had notice of the receiver, but it had slipped their attention, and they commenced their action. True, the court was bound to preserve its dignity, but that dignity was not preserved by preventing parties from prosecuting their legal rights; and he thought the most dignified thing the court could do was to let the proceedings go on, applicants to proceed in the action in the same manner as if the action had been commenced on that day, so that the defendants might not be damaged by not previously acting on defence. The cost to be paid by the moving party.

#### Queen's Bench.

(Before the Four Judges.)

*Wood v. Lord Portarlington.* Trinity Term, 1847.

#### ATTORNEY.—MISCONDUCT.

*In an action on a bill of exchange, where it appeared that the attorney for the defendant had attempted to suborn a witness to commit perjury in giving testimony that the bill was given for a gambling debt, the court made a rule absolute for the attorney to be struck off the roll.*

A RULE nisi had been obtained to strike Mr. Macey, an attorney of this court, off the rolls. The case had gone before one of the Masters, and after his report had been read,

Sir F. Kelly, Mr. Bayley, and Mr. Bovill showed cause against the rule, and

Sir F. Thesiger and Mr. Wordsworth appeared in support of it.

The facts and circumstances of the case fully appear from the judgment of the court which was delivered the day after the case was argued.

Lord Denman, C. J., delivered the judgment of the court. This was an application to strike an attorney off the rolls of this court. I have read the affidavits, and am bound to say, that every thing which is important was brought before the court in the course of the argument, and has been fully considered. The charge against Mr. Macey was for an attempt to suborn one Joseph Wallis to commit perjury in an action on a bill of exchange brought by a person named Wood against the Earl of Portarlington. Macey was the attorney for the defendant. Wallis was supposed to have acquired a knowledge of the hand-writing of the defendant,

having been a clerk in the office of Messrs. P. & R., the former attorneys for the defendant. Macey, Wallis, and the attorney for the plaintiff were all together at an hotel at breakfast before the trial of the cause came on. At the breakfast table, while the attorney for the plaintiff was absent for a short time, Macey placed a paper in the hand of Wallis. The paper is in these terms:—"It is believed that Mr. Wallis will be called to prove the defendant's hand-writing to the bill; that in May or June, 1839, when the first and second bills became due, the defendant called on Messrs. P. & R., and said, that the plaintiff threatened proceedings against him, and he then saw the clerk there, and informed him that the consideration for these bills was a gambling debt and discounts, and that if the plaintiff attempted to sue him, he would bring evidence to show that the bills had been given for that purpose; that the plaintiff admitted that to be the fact, and he never attempted to sue the defendant during the time that Mr. Wallis was clerk to Messrs. P. & R., which was from that time until the year 1844." Two copies of this paper were made: one was given to Wallis, and one to the counsel. If Wallis had sworn that which was stated in the paper, the defendant must have had a verdict. Wallis told the plaintiff's attorney that he was not clerk to Messrs. P. & R. during the time stated in this paper. The statement so drawn up was utterly false. It was a mere fable, of which Macey had no other evidence than that which the paper suggested that Wallis could give. He did not at any time pretend to say that he had any information that led him to believe that it was true, nor that he believed it to be true. What he did, therefore, was a mere experiment to see whether the witness would consent to state these falsehoods thus deliberately stated in the paper. Wallis was at the time a needy, dishonest, and notoriously profligate man, and he had been known to Macey for about a year. Such a proposition was not made without at the same time something being done to excite the expectation of reward to the person to whom this memorandum was addressed, and it was thought that on that expectation some false statement like that in the memorandum would be made. At the foot of the memorandum were these words and figures,—"*Q. 5l.*" Macey was called upon to explain the meaning of the memorandum, and how he came to make it. He swore he was unable to do so. We find it impossible to doubt that it was an offer of 5*l.* as the price of the false evidence thus suggested. That is the case, such facts being clearly established, not by the evidence of the complainant alone, but by Macey's own statements. That being so, can the court permit the person to continue in practice? We think it quite impossible to permit him so to continue. The conduct of the plaintiff's attorney, who immediately after the trial was informed of what had passed, is very extraordinary, but it does not touch the truth of the principal fact. He was in the society of Macey on the next

day, and instead of bringing the matter immediately before the court, he kept it to himself as a means of extorting from Macey the costs. We deem such conduct to be a misprision, strongly calling for our censure. We have had some doubts respecting the costs of this application; but it is an application made, not by the attorney but by the plaintiff, who has a just cause of complaint. We think that Macey must be struck off the roll, and that he must pay the costs of this application.

Rule absolute.

On a subsequent application being made, the court said, that the rule would be absolute, each party paying their own costs.

### Common Pleas.

*Hopkins v. Prescott.* Trinity Term, June 2nd, 1847.

SALE OF PUBLIC OFFICE.—ILLEGAL CONTRACT, UNDER 5 & 6 EDWARD 6, c. 16.—AGREEMENT VOID IN PART, VOID FOR THE WHOLE.

*Where the agreement disclosed in the declaration was for the sale to the defendant of the business of a law stationer, for the sum of 300*l.*, and further, that the plaintiff should cease to carry on such business, or collect any of the assessed taxes in right of the office of collector of assessed taxes and sub-distributor of stamps, which, as recited in the declaration, the plaintiff then carried on, and would use his best endeavours to introduce the defendant to the said business and offices: Held, that under the provisions of the 5 & 6 Edw. 6, c. 16, the agreement was void, being entire, and for the sale of an office relating to the receipt of the revenue.*

ASSUMPSIT. The declaration recited an agreement between the plaintiff and defendant, which, after reciting that the plaintiff had carried on the business of a law stationer, and had been a sub-distributor of stamps, collector of assessed taxes, and agent for the Birmingham Fire Office for the town of Stourbridge, and neighbourhood, &c., and an agreement for the sale of the said business upon certain terms, witnessed, that in consideration of 300*l.* &c., the plaintiff agreed to sell, and the defendant to purchase, all the said business, &c. The declaration next recited, that it was by the said agreement further contracted on the part of the plaintiff, that he would not at any time after the 1st of March next, after the making of the said agreement, carry on the business of a law stationer, or collect any of the assessed taxes, or accept the office of an agent to any fire and life assurance company in the town of Stourbridge, or within ten miles thereof, but would use his utmost endeavours at the expense of the defendant, to introduce him, the defendant, to the said business and offices, as by the said agreement fully appears. There was then an averment of the defendant's undertaking to perform the agreement on his part, followed by the

statement of performance on the part of the plaintiff in the terms of the agreement. Breach, the nonpayment by the defendant of the first instalment of the purchase money. The defendant pleaded, that before and at the time of the making the said supposed agreement and promise in the declaration mentioned, the plaintiff held, exercised, and enjoyed the office of sub-distributor of stamps for the town of Stourbridge and neighbourhood, the same then and still being an office touching and concerning the receipt of her Majesty's revenue; and further, that by the said agreement in the declaration mentioned and so taken and made by the plaintiff as therein mentioned, he the plaintiff did unlawfully, corruptly, and against the statute in that case made and provided, agree with the defendant to receive and have from him, the defendant, a certain sum of money, to wit, the money in the declaration mentioned, to the intent that he the defendant should have, exercise, and enjoy the said last-mentioned office, whereby the said supposed agreement was and is utterly void in law. Verification. Replication, that the plaintiff did not by the said agreement, &c., agree with the defendant to receive or have from him, the defendant, the said sum of money, &c., to the intent that he, the defendant, should have, exercise, or enjoy the said office, &c. Special demurrer and joinder.

*Hugh Hill*, (*Badeley* with him,) in support of the demurrer. The agreement on which the declaration is framed is void, being a contract for the resignation by the plaintiff of the office of collector of assessed taxes and sub-distributor of stamps, and if any part be contrary to the statute law, the whole is void. *Lee v. Coleshill*, Cro. Eliz. 529; 2 And. 55, referred to in *Twyne's case*, 3 Rep. 80; *Norton v. Simes*, Hob. 14. The 49 G. 3, c. 126, s. 3, enlarges the 5 & 6 Edw. 6, c. 16, s. 2, which makes void bargains for offices touching the receipt of the revenue, and makes such bargains a criminal act. There are several cases on these statutes: *Sir Arthur Ingram's case*, 3 Inst. 154; *Huggins v. Bainbridge*, Willes, 241; *Lang v. Payne*, id. 571; *Parsons v. Thompson*, 1 H. Bl. 322; *Garforth v. Fearon*, id. 327; *Blachford v. Preston*, 8 T. R. 89; *Stackpole v. Earle*, 2 Wils. 133. The office of sub-distributor of stamps is expressly mentioned in the 3 & 4 W. 4, c. 97, s. 1 & 3, and is clearly an office touching the receipt of the revenue. As to the office of collector of assessed taxes, it is expressly mentioned in the 3 Geo. 4, c. 88, and 5 & 6 W. 4, c. 20, and also concerns the revenue.

*Prentice*, contra. The question here is, whether if a contract be only in part for the sale of a public office, it is void as to the whole. All the cases quoted are cases of bonds, and therefore distinguishable. In *Thompson v. Pitcher*, 6 Taunt. 359, the court held that a deed void in part under the 9 Geo. 2, c. 36, was not void in toto. *Kerrison v. Cole*, 8 East, 231, might also be quoted as an authority. The consideration of the agreement is the sale of the business of a law stationer, and the other

matters are merely collateral. The endeavours which the defendant undertook to make in order to introduce the defendant into the business of the offices might mean such as were legal. *Bellamy v. Burrow*, Ca. Temp. Talb. 107. Besides, it was consistent with the declaration that the plaintiff had ceased to be collector when the contract was made, and there is nothing illegal in a stranger agreeing not to collect the taxes.

*Badeley* was heard in reply.

*Wilde, C. J.* I am of opinion that the defendant is entitled to the judgment of the court, as the declaration does not disclose a good cause of action. The declaration sets out the agreement, and the first point is, whether it is an entire agreement, or one that is separable in its nature and applicable to totally distinct matters. It appears to me to amount to one entire agreement, although it is to perform several distinct acts. Looking at the whole of the declaration, I can see no ground for saying that one of the several matters alleged form the consideration as contradistinguished from the others; but, on the contrary, they seem to me to constitute one entire consideration. This being the case, the next question is to what does the contract relate. It appears to me to relate to the business of a law stationer, to the office of a collector of the revenue, a sub-distributor of stamps, and agent to a fire office. Then is there any statute showing that this is an illegal contract. I cannot doubt, looking at the various enactments on the subject, that both of the offices just referred to relate to the receipt of the revenue, and if they do, then there is one entire agreement, having for its object the payment of a certain sum of money as the purchase of an office touching or concerning the receipt of the revenue. It is unnecessary to investigate the law beyond the first statute referred to; but it appears that the 49 Geo. 3, c. 126, makes it a misdemeanour to enter into such a contract. The plaintiff then has declared on an agreement void in point of law, and without, therefore, unnecessarily going into a consideration of the plea and replication, the defendant is entitled to the judgment of the court.

*Coltman, J.* I am of the same opinion. The contract is an entire one, and in order to entitle the defendant to recover the whole, consideration must be proved. If any part, therefore, be void, it cannot be recovered upon. The offices referred to relate clearly to the revenue, and are consequently within the prohibitions of the statute. The case of *Law v. Law*, 3 P. W. 391, is an authority to show that the mere using of another's interest, with respect to a public office, came within the statute, although that other had not the power to dispose of such office. But even at common law, I think the contract would have been void, as in the case of *Harrington v. Duchatel*, 1 Br. C. C. 124.

*Maule, J.* I also am of opinion that the declaration is bad, on the ground of its disclosing a contract void by the 5 & 6 Edw. 6,

c. 16. It is clear that the office in question is one touching the revenue, and therefore within that act. It is said that the mutual promises in the declaration may be rejected, and the valid agreement to sell the business upheld. But I think no such rejection can be made. Words in pleading cannot be struck out so as thereby to give a totally different sense to the declaration, and I think the declaration must be construed as stating the defendant's promise to pay 300*l.* in consideration of the plaintiff introducing him into the office mentioned, and by reason of that the defendant is entitled to judgment.

*Cresswell*. It is impossible to look at the declaration without seeing that the substance of the bargain was that the plaintiff should cease to hold the office of collector, to the intent that the defendant might obtain it through his, the plaintiff's, intervention, and that being so, the contract is void, and no cause of action exists.

Judgment for the defendant.

### Court of Exchequer.

*Tattersall v. Parkinson*. Easter Term, April 17, 1847.

PLEA OF PAYMENT OF MONEY INTO COURT.  
—SATISFACTION.—DAMAGES ULTRA.

*To a declaration containing a count on a bill of exchange for 26*l.* 13*s.*, and also a count for 30*l.* for money lent; the defendant pleaded as to 10*l.* 9*s.* 1*d.* parcel of the first count, and 10*l.* 9*s.* 1*d.* parcel of the second count payment into court of 11*l.*, (according to the form given by the rule of court): Held, on special demurrer, that the plea was bad, as it admitted two sums of 10*l.* 9*s.* 1*d.* to be due, and a payment of a less amount into court was no satisfaction.*

*Where a declaration contains a count on a bill of exchange, and also a count on the consideration for the bill: Semble, the plea ought to allege that the bill was given for the debt in the second count, and then plead payment into court of the amount of the bill and interest.*

**ASSUMPSIT** by indorsee against indorser of a bill of exchange for 26*l.* 13*s.* 2*d.* The first count of the declaration was on the bill; the second count was for 30*l.*, for money lent and money due on an account stated.

The defendant pleaded as to the second count, except as to 10*l.* 9*s.* 1*d.* parcel, &c., non assumpsit: and as to the whole declaration, except 10*l.* 9*s.* 1*d.* parcel of the first count, and 10*l.* 9*s.* 1*d.* parcel of the second count, payment before action brought, and also a set-off. And as to the 10*l.* 9*s.* 1*d.* parcel of the first count, and 10*l.* 9*s.* 1*d.* parcel of the second count, payment into court in the form prescribed by the rule of court, and no damages ultra.

The plaintiff demurred specially to the last plea.

*Gordon*, in support of the demurrer. The last plea professes to answer a portion of the

first count, and also a portion of the second count, viz., two sums of 10*l.* 9*s.* 1*d.*, parcel of the sums respectively mentioned in those counts, but the sum paid into court (11*l.*) is only an answer to part of those two sums, which together amount to 20*l.* 18*s.* 2*d.* The payment of a smaller sum of money is no satisfaction of a greater sum admitted to be due. *Pinnell's case*, 5 Rep. 117. Though this court, in the case of *Sibree v. Tripp*, 15 M. & W. 23, somewhat qualified the doctrine laid down in *Cumber v. Warre*, 1 Stra. 426, yet they recognized the principle that a payment of a less sum was no satisfaction of a greater. In *Down v. Hatcher*, 10 Adol. & E. 121, a plea of that kind was held bad even after verdict; *Todd v. Stuart*, 14 Law J., Q. B., 150, is to the same effect. A plea of tender of a smaller sum is no answer to a greater sum *à fortiori*, a mere payment into court of a smaller sum cannot be an answer to a larger sum admitted to be due; besides, the plea is inconsistent and repugnant, it admits 20*l.* 18*s.* 2*d.* to be due, and, nevertheless, alleges that the plaintiff has not sustained greater damages than 11*l.* *Mee v. Tomlinson*, 4 Adol. & E. 262; *Fisher v. Aide*, 3 M. & W. 486. If the money paid into court be applied to one count, then it leaves part of the other unanswered, unless the allegation of no damages *ultra* amounts to the general issue, which, in this case, would be bad, as the rule of court forbids such a plea to a bill of exchange.

*H. Hill*, contra. The plea is according to the form prescribed by the rule of court. The money paid into court may be applied to the count on the bill, and then the averment of no damages *ultra* would be a good answer to the other count. A defendant cannot plead payment into court in any other way where the *indebitatus* count is for the same sum, which is the consideration of the bill. The point was raised in *Jourdain v. Johnson*, 2 C. M. & R. 564, but not decided. *Mee v. Tomlinson* is overruled by *Marsall v. Whiteside*, 1 M. & W. 188.

*Cur. ad. vult.*

*Parke, B.*, (after stating the pleadings.) The case of *Jourdain v. Johnson* decides that a plea of payment into court may be made as to part of several counts without stating how much was paid in on each. There is, therefore, no objection on that ground. But when one of the counts is on a bill of exchange, the difficulty arises, which was pointed out in *Jourdain v. Johnson*, viz., that if less than the amount of the bill of exchange should be considered as paid in on that count, the plea would be bad. For if it admitted the bill, it would admit the precise sum to be due on it, and less than that would not legally satisfy it; or if it should be considered in the nature of a plea of non-assumpsit to the remainder, the new rules forbade such a plea. We don't see how this objection can be surmounted. Again, if the sum of 10*l.* 9*s.* 1*d.* is to be ascribed to the first count, the sum of 10*s.* 11*d.* only must be applied to the last count; and it is argued

with great weight that a less sum is no satisfaction of a greater. There are, no doubt, great difficulties in practice in adapting the new rule as to payment of money into court in some cases, and they were probably not foreseen in framing the rule. One of these difficulties arises from the form of a count in *indebitatus assumpsit*. In this form, which has been adopted for the sake of convenience, (as it would be impossible to declare on each separate contract without great prolixity of pleading,) each count may be interpreted to mean that the defendant is indebted to the plaintiff in the sum mentioned, either on one contract to pay that precise sum, or one contract on a *quantum meruit* which has resulted in a debt which the plaintiff estimates at that amount, or on several different contracts for different precise sums, or such on a *quantum meruit*, or on some for a sum certain; and some on a *quantum meruit*, together amounting to the sum claimed.

The variety of meaning which the comprehensive allegations of a debt in such a count is capable of bearing, creates a considerable difficulty in specially pleading to it, and particularly in the payment of money into court. If a smaller sum is paid on such a declaration than the sum claimed, the plea admits that the sum claimed is due on one or more contracts for liquidated or unliquidated amounts. If unliquidated, there is no difficulty in paying in a smaller sum than the amount claimed, for then the defendant may truly say, that the plaintiff has not sustained greater damage than the sum paid into court. But if the sum admitted is liquidated, or is an aggregate of liquidated sums, how can the plaintiff have sustained less damage than the liquidated amount in respect of the demand for that sum? The Court of Queen's Bench has already decided that a plea of accord and satisfaction by a less sum to a general declaration in *indebitatus assumpsit* for a larger sum is bad even after verdict. *Down v. Hatcher*. These considerations lead us to the conclusion that the form of pleading payment of a less sum of money into court than the sum pleaded to, with no answer to the difference, except that no more damages have been sustained, is objectionable, and that there is good reason for saying that the ordinary practice of pleading the payment of money into court, to so much of the declaration as is equal to the amount paid in, is the best that can be adopted. It is argued that there is no other way than this when the *indebitatus* count is really for the sum which is the consideration of the bill. Certainly there must be some mode of pleading applicable to such a case, for without doubt the plaintiff cannot recover both the amount of the bill on the count on the bill and the amount of the consideration on the *indebitatus* counts; but it is not necessary for us to decide in what form such a plea ought to be. Probably it would be sufficient to plead to both counts that the bill was given on account of the debt in the second count,

and then to plead payment into court of the amount of the bill and interest. The plea, in its present form, is bad; but the defendant may amend on the usual terms.

Rule accordingly.

#### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From June 23rd to July 23rd, 1847, both inclusive, with dates when gazetted.*

Allford, William Naish, and Benjamin Chandler, jun., Sherborne, Solicitors and Attorneys. July 9.

Basham, George, and Bury Victor Hutchinson, 7, Staple Inn, Attorneys and Solicitors. July 16.

Butterfield, Francis and Mark Pickup, Bradford and Bingley, Attorneys and Solicitors. July 16.

Caparu, Robert and Richard Caparu, Newark-upon-Trent, Attorneys and Solicitors. July 13.

Carlyon, Edward Trewbody, and Peter Cock, Truro, Attorneys and Solicitors. June 22.

Collett, Charles Minors, George Laurie, and Thomas Augustus Attree, 62, Chancery Lane, Attorneys and Solicitors, so far as regards the said Charles Minors Collett. July 23.

Howlett, Henry William, and Charles Ham Wise, Raymond Buildings, Gray's Inn, Attorneys, Solicitors, and Conveyancers. July 6.

Jackson, Henry, and Middleton Hewitson, Kirkby Stephen, Attorneys and Solicitors. July 13.

Oliver, John Bass, and William Lindsell, 2, Raymond Buildings, Gray's Inn, and Moorgate Street Chambers, Attorneys and Solicitors. July 2.

Roy, Richard, and Joseph Blunt, 42, Lothbury, and Great George Street, Westminster, Attorneys, Solicitors, and Conveyancers. July 16.

Walker, Henry, and Henry Gillelt Gridley, 5, Southampton Street, Bloomsbury Square, Attorneys and Solicitors. June 29.

#### THE EDITOR'S LETTER BOX.

Our correspondents will please to address their letters and communications, in future, to "The Editor of the Legal Observer," at Messrs. A. Maxwell and Son's, 32, Bell Yard, Lincoln's Inn.

The New Statutes will be given as speedily as possible, followed by explanatory notes on their effect. The important Act relating to Bankruptcy and Insolvency (being No. 3 of the legislative measures of the late session on that subject,) will be found at page 310, and the Poor Removal Act at page 313, *ante*.

In order to include these statutes and some original articles of immediate interest, the present number has been enlarged to 32 pages, but without any extra charge. We shall adopt this course from time to time as occasion may require, whether on account of New Statutes or important Decisions in the Superior Courts.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, AUGUST 7, 1847.

———"Quod magis ad Nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

### THE LAW RELATING TO THE ELECTION OF MEMBERS OF PARLIAMENT.

WE would fain hope that the elections now proceeding throughout the kingdom may not furnish many instances of returns obtained by undue influence of any kind, and could have wished that the great constitutional principle that elections shall be free, which was recognised in the earliest periods of our parliamentary history, had been maintained inviolably. There is too much reason to suspect, however, that we are no better in this respect than those who have preceded us, and that the illegal arts and devices adopted at former general elections have been resorted to on the present occasion, in many places, with greater or less success.

It may not be inappropriate, therefore, to refer to the means which the law affords for preventing and punishing the exercise of undue influence at elections, either by bribery, or intimidation, or by illegal interference.

It is said, in *Rex v. Pitt*,<sup>a</sup> that "bribery at elections of members of parliament must always have been a crime at common law." In point of fact, however, there is no record of any action or prosecution for bribery at elections, until after the passing of the stat. 2 Geo. 2, c. 24, which enacts, that "if any person by himself, or by any person employed by him, doth or shall, by any gift or reward, or by any promise, agreement, or security for any gift or reward, corrupt or procure any person to give his vote, or

to forbear to give his vote in any election," he is guilty of bribery. Doubts having arisen, whether payment made to voters, under particular circumstances, could be deemed bribery within the meaning of the words cited, the stat. 5 & 6 Vict. c. 102, s. 20, provides, that "the payment or gift of any sum of money, or other valuable consideration whatsoever, to any voter, before, during, or after, any election, or to any person on his behalf, or to any person related to him by kindred or affinity, and which shall be so paid or given on account of such voter having voted, or having refrained from voting, or being about to vote or refrain from voting, at the said election, whether the same shall have been paid or given under the name of head-money, or any other name whatsoever, and whether such payments shall have been made in compliance with any usage or practice, or not, shall be deemed bribery." By the 2 Geo. 2, c. 24, s. 7, not only the person who takes the bribe, but any person who, by any gift, reward, or promise, procures any person to give his vote, or to forbear from voting, incurs a penalty of 500*l.*, and is disabled from voting.<sup>b</sup> By the 49 Geo. 3, c. 118, any person giving or promising any money or reward to any person, upon the engagement that the person to whom, or on whose behalf, the gift or promise is made, shall procure the return of any person to parliament, shall, if not returned, forfeit 1,000*l.* for every such gift or promise; and every person so giving or promising shall, if returned, be disabled

<sup>b</sup> Participants in the crime are indemnified by discovering other offenders.



from serving in that parliament. The receiving person is also subject to penalties.

Irrespective of the statutes prohibiting bribery, the House of Commons, from an early period, has taken cognizance of corrupt practices at elections, as an offence against the privileges of the House. In a great variety of cases, in which candidates, either by themselves or their agents, have been guilty of bribery, the house has passed resolutions avoiding the elections made in such cases, and, in some cases, seating the rival candidate. The law and statutes with respect to the discovery and proof of bribery will be more conveniently referred to when the practice on election petitions is treated of.

"Treating," in the present state of Election Law, is an offence distinct from bribery? There is a standing order of the House of Commons, passed so far back as the year 1677, known as the Treating Resolution: it is in these words:—

"That if any person hereafter to be elected into a place, for to sit and serve in the House of Commons, for any county, town, port, or borough, after the teste or the issuing out of the writ or writs of election, upon the calling or summoning of any parliament hereafter, or after any such place becomes vacant hereafter in the time of parliament, shall by himself, or by any other in his behalf, or at his charge, at any time before the day of his election give any person, or persons, having votes in any such election, any meat, or drink, exceeding the true value of ten pounds in the whole, in any place or places but in his own dwelling-house or habitation; being the usual place of his abode for six months last past, or shall before such election be made and declared, make any other present, gift, or reward, or promise or obligation or engagement to do the same, either to any such person or persons in particular, or to any such county, city, town, port, or borough, in general; or to or for the use and benefit of them or any of them, every such entertainment, present, gift, or reward, promise, obligation, or engagement, is by this house declared to be bribery, and such entertainment, present, gift, reward, promise, obligation, or engagement, being duly proved, is, and shall be sufficient ground, cause, and matter to make every such election void as to the person so offending, and to render the person so elected incapable to sit in parliament by such election, and hereof the committee of elections and privileges is appointed to take special notice and care, and to act and determine matters coming before them accordingly."

The offence of "treating," however, is prohibited by various acts of parliament. The 7 W. 3, c. 4, disables any person from serving as a member who, after the teste of the writ of summons to parliament, "directly or indirectly gives, presents, or al-

lows to any person having voice or vote in such election, any money, meat, drink, entertainment, or provision, or makes any gift, present, reward, or entertainment." And, this provision having proved inadequate, the 5 & 6 Vict. c. 102, s. 22, incapacitates any candidate from sitting who contributes to the expenses incurred for any meat, drink, entertainment, or provision, to or for any person, at any time, either before, during, or after such election, for the purpose of corruptly influencing such person, or any other person, to give, or to refrain from giving, his vote in any such election. And by the 7 & 8 Geo. 4, c. 37, s. 3, candidates are prohibited from giving, directly or indirectly, to voters or inhabitants, any cockade, riband, or other mark of distinction, under a penalty of 10*l.* for every offence. The illegality of candidates furnishing voters with entertainment of any description after the teste of the writ, has been discussed in various cases at law; and it has been holden, that an innkeeper cannot recover against a candidate for provisions so furnished.<sup>c</sup> It would appear, however, that to prevent the innkeeper from recovering, on the ground of illegality, the meat and drink must be supplied by him with a view to induce the electors to vote for a particular candidate.<sup>d</sup>

The interference of peers in elections for members of parliament has long been a subject on which great jealousy has been evinced by the House of Commons, as appears by successive resolutions of the house, bearing date the 10th Dec., 1641, the 15th Feb., 1700, and the 27th April, 1802, after the union with Ireland. The interference of ministers and officers of the Crown is also prohibited, as well by statute as by resolution of the house. The officers of the excise<sup>e</sup> and customs<sup>f</sup> are prohibited from interfering; and, as regards elections in the metropolitan districts, justices, receivers, Thames police surveyors, and police constables are interdicted.<sup>g</sup>

The act 2 & 3 W. 4, c. 69, also prohibits the application of corporate property for election purposes, and gives an action to any two freemen, against any corporate officer or trustee offending against the provisions of the act.

The presence of the military at elections:

<sup>c</sup> *Ribbons v. Crickett*, 1 Bos. & P. 264.

<sup>d</sup> *Thomas v. Edwards*, 1 Tyr. & Gr. 872.

<sup>e</sup> 7 & 8 Geo. 4, c. 53.

<sup>f</sup> 12 & 13 Will. 4, c. 10.

<sup>g</sup> 3 Will. 4, c. 19, s. 19.

is another subject on which great jealousy has constantly been manifested. After successive resolutions of the House of Commons in reference to this subject, the stat. 8 Geo. 2, c. 30, provided, that the Secretary at War should take measures, one day at least before the election, to remove the military to the distance of at least two miles from the place of election, until one day at least after the polling concludes; and in case of his neglect, he is to lose his office, and is declared incapable of holding any office under the crown. But the city of Westminster, the borough of Southwark, and any place where her Majesty or any of the royal family reside at the time of election, is excluded from these provisions, in respect of such soldiers as shall be attendant as guards on the Queen, or any of the royal family.

Riots and outrages at elections, by which the election is prevented and voters intimidated, totally avoid the election. In several cases, where elections were proved to have been interrupted and prevented by riot, the House of Commons has not only declared elections made under such circumstances void, but has directed the Attorney-General to prosecute the promoters of such riots. If the riots be of a serious nature, the Riot Act may be read, though not unnecessarily; and persons rioting may be committed to custody forthwith by the returning officer, without warrant.<sup>b</sup> By the statute 5 & 6 W. 4, c. 36, where the election proceedings are interrupted at any stage, the returning officer is authorised to adjourn until the tumult has ceased, and then to resume the business so interrupted.

Some of the circumstances under which votes may be said to be lost, or recorded contrary to the intention of the voter, are said to have arisen in certain cases during the present general election, and may, therefore be considered not undeserving of consideration. As a general rule, votes given for a candidate who is ineligible, after notice being given of his ineligibility, are to be looked upon as of no avail.<sup>1</sup> The notice may be given at any time, but the effect will be confined to votes subsequently given. A vote may be thrown away through an error at the time of polling. As already stated, (*ante*, p. 307,) it is expressly enacted, that particular polling places shall be appropriated for the voters

in each parish or district; but, according to the decisions of committees, a voter who has been permitted by the sheriff or poll clerk to vote at the wrong booth, does not thereby lose his vote.<sup>k</sup> It is quite clear that it is not competent for a voter entitled to vote for two candidates, first to vote for one, or as it is termed, "to *plump*," and afterwards at the same election to vote for a second candidate. Where a vote is improperly taken by the poll clerk, without any mistake of the voter, it ought to be set right by the returning officer. When the mistake is on the part of the voter, the case is somewhat different. As an instance of this description is stated to have occurred at the late election for Abingdon, where a vote was recorded for Sir F. Thesiger, which was intended for his opponent, General Caulfield, we copy from Mr. Wordsworth's book on elections (p. 92) two cases in which there have been conflicting decisions of election committees, under circumstances somewhat similar.

'In the *Taunton case*<sup>l</sup> John White stood on the poll as having voted for Labouchere and Lee, but the original entry was for Bainbridge and Lee. It was now proved (on an application to the committee to have the former entry restored) that the voter came to the poll and said he voted for Bainbridge and Lee, which the poll-clerk entered accordingly. The voter then turned from the table, as if going away, but suddenly turned round towards the table again, and said, 'I beg pardon, I meant Labouchere and Lee.' The poll-clerk said to him that he had recorded the vote for 'Bainbridge and Lee,' but they both went to the returning officer, who ordered the entry to be altered into 'Labouchere and Lee.' The committee directed the vote to be entered for Bainbridge."

"In the *Reading case*<sup>m</sup> there were two instances in which the committee came to a determination opposed to that mentioned in the preceding case. The first was that of Thomas Clift, who, upon coming to the poll, was asked for whom he voted; he said, 'Russell and Palmer,' and upon this the agent of Mr. Palmer gave him a card of thanks. Upon receiving the card he turned round as he was in the act of going away, and said that 'he did not mean to vote for Mr. Russell, he meant to vote for Mr. Serjeant Talfourd.' This he said before he left the front of the polling place, and before he had communicated with any person, but after he had moved a slight distance from the spot where

<sup>k</sup> *Middlesex case*, 2 Peck, 57; *Gloucestershire case*, id. 259.

<sup>l</sup> *Falc. & Fitz. Elec. R.* 299. There was a similar decision in the *Monmouth case*. In re Llewellyn. *Knapp & Om.* 413.

*Falc. & Fitz.* 556.

<sup>a</sup> *Spillesbury v. Mickelthwaite*, 1 Taunt. 146.

<sup>1</sup> *Rez v. Hawkins*, 10 East, 211; S. C. 2 Dow. 124; *Claridge v. Evelyn*, 5 B. & A. 81.

he stood when he voted. The matter was referred to the mayor, and the poll was altered. The other instance was that of Henry Corderoy, who came to the polling place and voted for 'Russell and Talfourd.' Having done this, a Mr. Evans who polled at the same time took him back about three feet from the polling place, and made some remark to him, when the voter came back to the polling place and said 'that he had made a mistake in polling for Russell and Talfourd, and that he meant to have voted for Palmer and Talfourd.' It was stated that the poll could not be altered; but upon Mr. Weeden, an agent of Mr. Palmer, saying it was allowable to alter the poll if the party had not left the booth, the polling-clerk, in the absence of the mayor, altered the poll. The poll-clerk in his evidence represented the vote given for Russell to have been recalled almost instantaneously, but admitted it to have been entered on the poll. In both these instances the committee refused to alter the poll, thus giving effect to the alterations that had been made by the poll-clerks.

As usual at a general election where the contests have been numerous and severe, an appeal to the house is threatened in several instances. We shall, therefore, endeavour to furnish our readers with a short summary of the law and practice in regard to election petitions at the earliest opportunity.

## EXEMPTION OF MEMBERS OF PARLIAMENT FROM ARREST.

THE privilege of members and ex-members of parliament from arrest in civil actions is a subject on which some misunderstanding exists, and which is a good deal canvassed, in more than one part of the united kingdom. The exemption is clearly and expressly recognised by several statutes, but the extent of the privilege is not very clearly defined in any case.

Before the 12 & 13 Will. 3, c. 3, members of parliament held themselves to be privileged not merely from arrest, but from being sued. By that statute, parties were enabled to sue peers and members of parliament while the parliament was not actually sitting; but a reservation was made of their right to immunity from personal arrest. The stat. 10 Geo. 3, c. 50, allows suits against members whilst the house is sitting, as well as during the recess of parliament, but expressly provides, that nothing therein contained shall extend to subject the person of any member "of the House of Com-

mons of Great Britain for the time being, to be arrested or imprisoned upon any such suit or proceedings." There is a similar reservation in the Uniformity of Process Act, (2 Will. 4, c. 39.)

Blackstone states somewhat vaguely, that a commoner is privileged "for forty days after every prorogation, and forty days before the next appointed meeting; which is now in effect as long as the parliament subsists, it seldom being prorogued for more than fourscore days at a time." <sup>n</sup> Tidd cites this passage from Blackstone, and introduces it thus:—"By the law and custom of parliament, members of the House of Commons are privileged from arrest, not only during the actual sitting of parliament, but for a convenient time, sufficient to enable them to come from and return to any part of the kingdom before the first meeting, and after the final dissolution." We are not aware that it has ever been expressly determined how long the privilege endures *after a dissolution*, but the existence of the privilege was distinctly recognized in *Holiday v. Pitt*.<sup>o</sup> In that case it appears the parliament was prorogued on the 16th day of the month, and dissolved on the 17th. The defendant, Colonel Pitt, was arrested on the 20th, and applied to the King's Bench for his discharge, on the ground that members had a privilege *re-deundo* after the dissolution, and that the arrest was within such time of privilege. In argument, it was suggested that the privilege subsisted for forty days after the parliament; but it was admitted, that the House of Commons had always avoided answering the question, and had left it at large to a convenient time of which themselves were the judges. Therefore, in the case of Mr. Martin in 1586, who was arrested twenty days before the meeting of parliament, the house resolved they would not limit the time, but that the twenty days were within a convenient time, and that therefore Mr. Martin should be discharged. Colonel Pitt's case was argued at great length, before all the judges at Serjeants' Inn, and they determined that he was entitled to privilege *re-deundo* for a convenient time, and that within that time he was arrested. He was therefore discharged out of custody.

The only authority cited for the sug-

m. p. 11

<sup>o</sup> 2 Stra. 985; Cas. Tun. Hard. 28, 37; 2 Comyn's R. 444.

gestion, that the privilege continues for forty days after a dissolution, is a case of *The Earl of Athol v. The Earl of Derby*, touching the privilege of peers, and how long it lasts.<sup>p</sup> It appears, that by two orders of the House of Lords, dated respectively the 28th May, 1624, and the 27th Jan., 1628, they declare their privilege commences from the teste of their writ of summons to parliament; and that upon every session and prorogation, their privilege is for twenty days before, and twenty days after each session, which the order says is time enough for them to come from all parts of the realm, and to return. The reporter adds:—"But it is said the Commons never assented to this, but claim forty days after and before each sessions." So in the Cot. Records, 704, it is said, that "the Commons claim privilege forty days before and forty days after every session; but the Commons never have ascertained the time of their privilege."

The case in Levinz was determined so far back as Michaelmas Term, 24 Car. 2; and it will be observed that *Colonel Pitt's* case was heard in Michaelmas Term, 7 Geo. 2, long before the passing of the stat. 10 Geo. 3, c. 50, above cited, which restricts the exemption from arrest to members of the House of Commons "for the time being." It may be deserving of consideration, therefore, whether a member of the late parliament has any privilege from arrest since the dissolution? The privilege of newly elected members, for forty days before the day appointed for the sitting of parliament, stands upon a somewhat different footing; but, as already observed, the authority for this proposition is by no means satisfactory.

As most of our readers are aware, the new parliament is summoned for Tuesday, the 21st of September next, which is forty days from Thursday the 12th August.

## COMMON LAW PRACTICE.

### ATTORNEYS' LIABILITY FOR BAILIFFS' FEES.

THE question, whether the attorney or the client is liable to the bailiff for the fees usually allowed on taxation for the execution of process, was determined by the

Court of Common Pleas, in a case very recently reported.<sup>q</sup>

The plaintiff, (Walbank,) an officer of the Sheriffs of London, claimed from the defendant, who is an attorney, three guineas, the amount of certain fees alleged to be due to him for the execution of three warrants from the Sheriffs of London, which were directed to the plaintiff at the defendant's instance. The question was, whether the defendant was personally responsible for those fees?

For the defendant, it was submitted, that the action should have been brought against the client, and not against the attorney, who was merely the agent of the principal directed by the principal himself. The decision of the Court of Exchequer, in *Robins v. Bridge*,<sup>r</sup> was relied upon in support of this view. In that case it was said, by Abinger, C. B., that "the attorney does not make himself liable for anything, unless it is for those charges which he is himself bound to pay, and for which he makes a charge;" and it was expressly holden in that case, that the attorney was not responsible to a witness for expenses, for it was said, that the witness had no dealing with the attorney, but gave his evidence for the party to whom and by whom the obligation was incurred.

The court thought the case of a bailiff resembled much more that of an officer of the court than that of a witness. But authorities were not wanting to show that the attorney was liable. In *Townshend v. Carpenter*,<sup>s</sup> a sheriff's officer, employed by an attorney to make arrests on mesne process, was allowed to recover against the attorney; and in *Forster v. Blakelock*,<sup>t</sup> Abbott, C. J., expressly laid it down, that the officer was entitled to claim the sum usually allowed from the attorney by whom he is employed, and was not bound to look to the party of whom he knew nothing. Upon these grounds, a verdict taken for the plaintiff was sustained.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### CHANCERY AFFIDAVIT OFFICE.

10 & 11 VICT. c. 97.<sup>a</sup>

An Act for the Discontinuance of the Attendance of the Masters in Ordinary of the High

<sup>q</sup> *Walbank v. Quarterman*, 3 Com. B. 94.

<sup>r</sup> 3 Mees. & W. 114. <sup>s</sup> Ry. & M. 314.

<sup>t</sup> 5 B. & Cres. 328.

<sup>a</sup> This act is to take effect from the 10th August, 1847.

<sup>p</sup> Reported 2 Levinz, 72.

**Court of Chancery in the Public Office, and for transferring the Business of such Public Office to the Affidavit Office in Chancery.**  
[July 22, 1847.]

1. *Attendance of Masters in Ordinary in Chancery discontinued.*—Whereas by an act passed in the 13th year of his late Majesty Charles the 2nd, it was amongst other things enacted, that from and after the 23rd day of October, 1661, there should be one public office kept as near the Rolls as conveniently might be, in which the Masters in ordinary, or one of them, should constantly attend for the administration of oaths and other purposes therein mentioned: And whereas it is expedient that the said Masters should no longer attend in person at the said public office, and that the duties required by the said recited act should be otherwise provided for: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the said act shall be and the same is hereby repealed, and that the attendance of the said Masters at the public office be discontinued from and after the time at which this act shall come into operation.

2. *Lord Chancellor may appoint a second assistant clerk of affidavits.*—That it shall be lawful for the Lord Chancellor to appoint one fit and proper person to assist in the performance of the duties of the clerk of affidavits and of the assistant clerk of affidavits, and of the other duties hereby transferred to them, to be called the second assistant clerk of affidavits, and that the duties by the said recited act directed to be done and performed by the Masters in ordinary in the public office shall hereafter be done and performed by the said clerk of affidavits and the assistant clerks of affidavits, in such place and in such manner and subject to such regulations as the Lord Chancellor shall from time to time order and direct, and they and each of them are hereby authorized to do and perform the same.

3. *Lord Chancellor may order remuneration to be paid to the clerk and assistant of affidavits.*—That there shall be paid to the said clerk of affidavits and the said assistant clerks of affidavits such remuneration, either in salary and fees, or partly by salary and partly by fees, as the Lord Chancellor shall think fit, not exceeding in the whole 1,200*l.* to the clerk of affidavits, 800*l.* to the first and 400*l.* to the second assistant clerk of affidavits; and that it shall be lawful for the Lord Chancellor to make such order and orders as may be necessary for payment of so much of such remuneration as shall consist of salary out of the fund intituled "The Suitors' Fee Fund Account," and for the payment of any part of the fees to be received to the account of the said fund.

4. *Appointment of second assistant clerk of affidavits. Saving rights of W. T. Smith.* 1 & 2 W. 4, c. 56; 5 & 6 Vict. c. 103; 6 & 7 Vict. c. 73.—That William Thodey Smith, the present clerk of the said public office, be and he is

hereby appointed the second assistant clerk of affidavits under this act, and that the salary on remuneration he shall receive under the provisions of this act shall be and the same is hereby declared to be in lieu of and as compensation for the loss sustained by him in respect of the fees hitherto received by him as clerk of the said public office: Provided always, and it is hereby declared, that this act shall not take away, diminish, or in any way prejudice the rights and interests of William Thodey Smith to and in the compensation granted, awarded, and ordered to be paid to him under and by virtue of the three several acts of parliament hereinafter mentioned; that is to say, an act made and passed in the 1 & 2 W. 4, c. 56, intituled "An act to establish a Court of Bankruptcy," an act made and passed in the 5 & 6 Vict. c. 103, intituled "An act for abolishing certain Offices of the High Court of Chancery in England," and an act made and passed in the 6 & 7 Vict. c. 73, intituled "An act for consolidating and amending several of the laws relating to Attorneys and Solicitors practising in England and Wales;" and that the rights and interests of the said William Thodey Smith under each of the said acts respectively shall be and continue the same to all intents and purposes as if this act had not been passed, and as if he had continued to hold his office of clerk of the public office, but nevertheless only for such period as he shall hold the office of second clerk of affidavits under this act.

5. *Lord Chancellor may also, with consent of treasury, order retiring annuities to disabled officers, not exceeding two-thirds of their salaries.*—That it shall be lawful for the Lord Chancellor, with the consent of the commissioners of her Majesty's treasury, by any order made on a petition presented to him for that purpose after the 10th day of August next after the passing of this act, to order (if he shall think fit) to be paid to any person executing the office of clerk of affidavits, assistant clerk of affidavits, or second assistant clerk of affidavits, or of chief clerk or junior or copying clerk to the master in ordinary of the Court of Chancery, who shall be afflicted with some permanent infirmity disabling him from the due execution of his office, and shall be desirous of resigning the same, an annuity not exceeding two-third parts of the yearly salary which such person shall be entitled to at the time of presenting such petition, to be paid out of the interest and dividends of the government or parliamentary securities which may be at any time standing in the name of the Accountant-General of the High Court of Chancery to an account intituled "Account of Monies placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," and an account intituled "Account of Securities purchased with surplus

This retiring provision for the Masters' clerks is a just and proper measure in order to secure efficient officers, but the public ought to pay the pensions, not the unfortunate suitor.—Ed.

Interest arising from Securities carried to an Account of Monies placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," or either of them; and the annuity mentioned in such order shall be paid by the governor and company of the Bank of England out of the interest and dividends aforesaid (but subject and without prejudice to the payment of all salaries and other sums of money by any act of parliament already directed or authorized to be paid thereout) by even and equal payments on the 5th day of January, the 5th day of April, the 5th day of July, and the 10th day of October in every year during the life of such person; and the executors and administrators of such person shall be entitled to receive, and shall be paid such proportionate part of the said annuity as shall have accrued from the next preceding quarterly day of payment to the day of his death.

6. *Commencement of act.*—That this act shall commence and take effect from the 10th day of August next.

7. *Out of what fund compensations awarded under provisions of 10 & 11 Vict. c. 60, to be paid.*—And whereas by an act passed in this session of parliament, intituled "An act to abolish One of the Offices of Master in Ordinary of the High Court of Chancery," it was enacted, that it should be lawful for the Lord Chancellor, with the consent of the commissioners of her Majesty's treasury, to award such compensation (if any), and in such manner and upon such conditions as he might think fit, to George Barrett and Edward Wright, the late chief and second clerks of Andrew Henry Lynch, or either of them, in consideration of the loss they or he may have sustained by reason of the abolition of the said office by the said act; And whereas no provision was made in the said act for the payment of such compensation; be it therefore enacted, That such compensation shall be paid by the Accountant-General, by virtue of an order for that purpose to be made by the said Lord Chancellor, out of the fund intituled "The Suitors' Fee Fund Account."

8. *Lord Keeper may act for Lord Chancellor for purposes of this act.*—That in construing this act all things directed to be done by the Lord Chancellor shall and may be done by a Lord Keeper or the first Commissioner for the custody of the Great Seal of the United Kingdom of Great Britain and Ireland.

#### HOUSE OF COMMONS COSTS TAXATION.

10 & 11 VICT. c. 69.<sup>c</sup>

An Act for the more effectual Taxation of Costs on Private Bills in the House of Commons. [22nd July, 1847.]

1. 6 G. 4, c. 123. *Recited act* 6 G. 4, c. 123

<sup>c</sup> The provisions of this act apply only to future sessions of parliament; but it may be well for those who are engaged in this important branch of business, to look forward to the taxation here enacted.

*repealed.*—Whereas an act was passed in the 6 G. 4, c. 123, intituled "An act to establish a Taxation of Costs on Private Bills in the House of Commons, and to prohibit the Sale of certain Offices under the Serjeant-at-Arms attending the House of Commons:" And whereas it is expedient to repeal the same, and to make more effectual provisions for taxing the costs and expenses to be charged by parliamentary agents, attorneys, solicitors, and others in future sessions of parliament in respect of bills subject to the payment of fees in parliament, commonly called private bills, and to be incurred in complying with the standing orders of the House of Commons relative to such bills, and in preparing, bringing in, and carrying the same through, or in opposing the same in, the House of Commons: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That, except as to any costs, charges, and expenses which shall have been incurred in the present or any preceding session of parliament, the said recited act shall be repealed: Provided always, that the repeal of the said recited act shall not be construed to revive any act or any provision thereof which was thereby repealed.

2. *Parliamentary agent, attorney, or solicitor not to sue for costs until one month after delivery of his bill. Evidence of delivery of bill. Power to judge to authorize action before expiration of one month.*—That no parliamentary agent, attorney, or solicitor, nor any executor, administrator, or assignee of any parliamentary agent, attorney, or solicitor, shall commence or maintain any action or suit for the recovery of any costs, charges, or expenses in respect of any proceedings in the House of Commons in any future session of parliament relating to any petition for a private bill, or private bill, or in respect of complying with the standing orders of the said house relative thereto, or in preparing, bringing in, and carrying the same through, or opposing the same in, the House of Commons, until the expiration of one month after such parliamentary agent, attorney, or solicitor, or executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, has delivered unto the party to be charged therewith, or sent by post to or left for him at his counting-house, office of business, dwelling-house, or last known place of abode, a bill of such costs, charges, and expenses, and which bill shall either be subscribed with the proper hand of such parliamentary agent, attorney, or solicitor, or in the case of a partnership by any of the partners, either with his own name or with the name of such partnership, or of the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or be enclosed in or accompanied by a letter subscribed in like manner referring to such bill: Provided always, that it shall not in any case be necessary, in the first instance, for such parliamentary agent, attorney, or solicitor, or the execu-

tor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, in proving a compliance with this act to prove the contents of the bill delivered, sent, or left by him, but it shall be sufficient to prove that a bill of costs, charges, and expenses subscribed in manner aforesaid, or inclosed in or accompanied by such letter as aforesaid, was delivered, sent, or left in manner aforesaid; but nevertheless it shall be competent for the other party to show that the bill so delivered, sent, or left was not such a bill as constituted a *bonâ fide* compliance with this act: Provided also, that it shall be lawful for any judge of the superior courts of law or equity in England or Ireland, or of the Court of Session in Scotland, to authorise a parliamentary agent, attorney, or solicitor, to commence an action or suit for the recovery of his costs, charges, and expenses against the party chargeable therewith, although one month has not expired from the delivery of a bill as aforesaid, on proof to the satisfaction of the said judge that there is probable cause for believing that such party is about to quit that part of the United Kingdom in which such judge hath jurisdiction.

3. *Taxing officer to be appointed by the Speaker.*—That the Speaker of the House of Commons shall appoint a fit person to be the taxing officer of the House of Commons, and every person so appointed shall hold his office during the pleasure of the Speaker, and shall execute the duties of his office conformably to such directions as he may from time to time receive from the Speaker.

4. *The Speaker to prepare list of charges thenceforth to be allowed.*—That the Speaker may from time to time prepare a list of such charges as it shall appear to him that, after the present session of parliament, parliamentary agents, attorneys, solicitors, and others may justly make with reference to the several matters comprised in such list; and the several charges therein specified shall be the utmost charges thenceforth to be allowed upon the taxation of any such bill of costs, charges, and expenses in respect of the several matters therein specified: Provided always, that the said taxing officer may allow all fair and reasonable costs, charges, and expenses in respect of any matter not included in such list.

5. *Taxing officer empowered to examine parties and witnesses on oath.*—That for the purpose of any such taxation the said taxing officer may examine upon oath any party to such taxation, and any witness who may be examined in relation thereto, and may receive affidavits, sworn before him or before any master or master extraordinary of the High Court of Chancery, relative to such costs, charges, or expenses; and any person who on such examination on oath, or in any such affidavit, shall wilfully or corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

6. *Taxing officer empowered to call for books and papers.*—That the said taxing officer shall be empowered to call for the production of any books or writings in the hands of any party to

such taxation relating to the matters of such taxation: Provided always, that nothing herein contained shall be construed to authorize such taxing officer to determine the amount of fees which may have been payable to the House of Commons in respect of the proceedings upon any private bill.

7. *Taxing officer to take such fees as may be allowed by the House of Commons.* *Application of fees.*—That it shall be lawful for the said taxing officer to demand and receive for any such taxation such fees as the House of Commons may from time to time by any standing order authorize and direct, and to charge the said fees, and also to award costs of such taxation against either party to such taxation, or in such proportion against each party as he may think fit, and he shall pay and apply the fees so received by him in such manner as shall be directed by any such standing order as aforesaid.<sup>d</sup>

8. *On application of party chargeable or on application of parliamentary agent, attorney, or solicitor, the taxing officer to tax the bill.* *No application to be entertained by taxing officer after verdict obtained.*—That if any person upon whom any demand shall be made by any parliamentary agent, attorney, or solicitor, or executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, for any costs, charges, or expenses in respect of any proceedings in the House of Commons in any future session of parliament relating to any petition for a private bill, or private bill, or in respect of complying with the standing orders of the said house relative thereto, or in preparing, bringing in, or carrying the same through, or in opposing the same in the House of Commons, or of any parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, who shall be aggrieved by the nonpayment of any costs, charges, and expenses incurred or charged by him in respect of any such proceedings as aforesaid, shall make application to the said taxing officer at his office for the taxation of such costs, charges, and expenses, the said taxing officer, on receiving a true copy of the bill of such costs, charges, and expenses which shall have been duly delivered as aforesaid to the party charged therewith, shall in due course proceed to tax and settle the same; and upon every such taxation, if either the parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, by whom such demand shall be made as aforesaid, or the party charged with such bill of costs, charges, and expenses, having due notice, shall refuse or neglect to attend such taxation, the said taxing officer may proceed to tax and settle such bill and demand *ex parte*; and if pending such taxation any action or proceeding shall be commenced for the recovery of such

<sup>d</sup> See p. 293, *ante*, where the proposed fees are stated, since ordered by the house.—*Ed.*



bill of costs, charges, and expenses, the court or judge before whom the same shall be brought shall stay all proceedings thereon until the amount of such bill shall have been duly certified by the speaker as herein-after provided: Provided always, that no such application shall be entertained by the said taxing officer if made by the party charged with such bill after a verdict shall have been obtained or a writ of inquiry executed in any action for the recovery of the demand of any such parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, or after the expiration of six months after such bill shall have been delivered, sent, or left as aforesaid: Provided also, that if any such application shall be made after the expiration of six months as aforesaid, it shall be lawful for the Speaker, if he shall so think fit, on receiving a report of special circumstances from the said taxing officer, to direct such bill to be taxed.

9. *Taxing officer to report to the Speaker.* If either party complain of report, they may deposit a memorial, and the Speaker may require a further report. If no memorial deposited, Speaker may issue certificate of the amount found due. Certificate to have the effect of a warrant to confess judgment.—That the said taxing officer shall, if required by either party, report his taxation to the Speaker, and in such report shall state the amount fairly chargeable in respect of such costs, charges, and expenses, together with the amount of costs and fees payable in respect of such taxation as aforesaid; and within 21 clear days after any such report shall have been made either party may deposit in the office of the said taxing officer a memorial, addressed to the Speaker, complaining of such report or any part thereof, and the Speaker may, if he shall so think fit, refer the same, together with such report, to the said taxing officer, and may require a further report in relation thereto, and on receiving such further report may direct the said taxing officer, if necessary, to amend his report; and if no such memorial be deposited as aforesaid, or so soon as the matters complained of in any such memorial shall have been finally disposed of, the Speaker shall, upon application made to him, deliver to the party concerned therein, and requiring the same, a certificate of the amount so ascertained, which certificate shall be binding and conclusive on the parties as to the matters comprised in such taxation, and as to the amount of such costs, charges, and expenses, and of the costs and fees payable in respect of such taxation, in all proceedings at law or in equity or otherwise; and in any action or other proceeding brought for the recovery of the amount so certified such certificate shall have the effect of a warrant of attorney to confess judgment: and the court in which such action shall be commenced, or any judge thereof, shall, on production of such certificate, order judgment to be entered up for the sum specified in such certificate in like manner as if the defendant in any such action had signed a warrant to

confess judgment in such action to that amount: Provided always, that if such defendant shall have pleaded that he is not liable to the payment of such costs, charges, and expenses, such certificate shall be conclusive only as to the amount thereof which shall be payable by such defendant in case the plaintiff shall in such action recover the same.

10. *Construction of certain words in this act.*—That in the construction of this act the word "month" shall be taken to mean a calendar month; and every word importing the singular number only shall extend and be applied to several persons, matters or things, as well as one person, matter, or thing, and every word importing the plural number shall extend and be applied to one person, matter, or thing, as well as several persons, matters, or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and the word "person" shall extend to any body politic, corporate, or collegiate, municipal, civil, or ecclesiastical, aggregate or sole, as well as an individual; and the word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other person allowed by law to make a declaration instead of taking an oath; unless in any of the cases aforesaid it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

11. *Form of citing the act.*—That in citing this act in other acts of parliament, and in legal and other instruments, it shall be sufficient to use the expression "The House of Commons Costs Taxation Act, 1847."

## LAWYERS IN THE NEW PARLIAMENT.

THE elections in the cities and boroughs being terminated, we presume that the fate of all or nearly all the professional candidates has been decided. It has rarely been the good fortune for a lawyer, or at all events a practising one, to represent a County. The memorable instance of Mr. Brougham's return for the great county of York was a splendid exception. Without waiting, therefore, for the county elections, we shall proceed to reckon the number of our learned friends, and there are none in whose success we do not cordially rejoice. We have only to wish that they may fulfil their duty, both to their constituents and their profession!

Of the members of the bar, the following is a list of those who served in the late and have been re-elected for the new parliament:

Aglionby, H. A., *Cockermouth*.  
Bernal, R., *Rochester*.  
Buller, C., Q. C., (*Judge Advocate*), *Liskeard*.  
Cabbell, B. B., *Boston*.  
Cardwell, E., *Liverpool*.

Christie, W. D., *Weymouth*.  
 Cripps, William, *Cirencester*.  
 Dundas, Sir D., S. G., *Sutherlandshire*.  
 Ewart, Wm., *Dumfries*.  
 Godson, R., Q. C., *Kidderminster*.  
 Greene, T., *Lancaster*.  
 Grey, Right Hon. Sir G., (*Home Secretary*),  
*North Northumberland*.  
 Hayter, W. G., Q. C., *Wells*.  
 Hogg, Sir J. W., Bart., *Honiton*.  
 Inglis, Sir R. H., *Oxford University*.  
 Jervis, Sir J., Knt., A. G., *Chester*.  
 Law, Hon. C. E., Q. C., *Cambridge University*.  
 Lefevre, Right Hon. G. S., *Hampshire*.  
 Nicholl, Dr., *Cardiff*.  
 Romilly, John, Q. C., *Devonport*.  
 Stuart, J., Q. C., *Newark*.  
 Talfourd, T. N., Q. S., *Reading*.<sup>a</sup>  
 Tancred, H. W., Q. C., *Banbury*.  
 Thesiger, Sir F., Knt., Q. C., *Abingdon*.  
 Walpole, S. H., Q. C., *Midhurst*.

Practising Barristers not before in parliament, now returned :

Baines, M. T., Q. C., Northern Circuit, *Hull*.  
 Brockman, E. D., Recorder of *Folkstone*,  
*Hythe*.

Cockburn, A. E., Q. C., Western Circuit,  
*Southampton*.

Evans, John, Q. C., *Haverfordwest*.  
 Headlam, T. E., Equity Bar, *Newcastle*.  
 Hildyard, R. C., Q. C., Northern Circuit,  
*Whitehaven*.

Jervis, J. J., Equity Bar, *Horsham*.  
 Martin, Samuel, Q. C., Northern Circuit,  
*Pontefract*.

Palmer, R., Equity Bar, *Plymouth*.  
 Turner, Geo., Q. C., Equity Bar.  
 Whateley, W., Q. C., *South Shields*.  
 Wilcock, J. W., Equity Bar.

Practising Solicitors, or who have formerly practised, and have been re-elected :

Benbow, J., *Dudley*.  
 Blewitt, R. J., *Monmouth*.  
 Grimsditch, Thomas, *Macclesfield*.  
 Neeld, J., *Chippenham*.

Practising Solicitors not before in parliament, now returned :

Bremridge, R., *Barnstaple*.  
 Cobbold, John Chevalier, *Ipswich*.  
 Hodgson, T. H., *Carlisle*.  
 Pearson, Charles, *Lambeth*.

Barristers not before in parliament who have appeared as candidates, but withdrew from the contest, or have been unsuccessful :

Bethell, Richard, Q. C., Equity Bar.  
 Butt, G. M., Q. C., Western Circuit.  
 Chambers, T., Home Circuit.  
 Cobbett, J. P., *Oldham*, Northern Circuit.  
 Crowder, R. B., Q. C., Western Circuit.

Gaselee, Serjeant, Home Circuit.  
 Glover, Serjeant, Oxford Circuit.  
 Humfry, L. C., Q. C., Midland Circuit.  
 Payne, William, Home Circuit, *London*.  
 Parry, J. H., Home Circuit.  
 Phillimore, J. G., Oxford Circuit.  
 Pendergast, M., Norfolk Circuit.  
 Rolt, J., Q. C., Equity Bar, *Stamford*.  
 Shee, Serjeant, Home Circuit, *Marylebone*.  
 Symons, J. C., Oxford Circuit.  
 Warren, Samuel, *Finsbury*.

Barristers in the last or former parliament, now unsuccessful :

Bodkin, W. H., Home Circuit, *Rochester*.  
 Escott, B., *Winchester*.  
 Freshfield, J. W., *London*.  
 Kelly, Sir F., *Cambridge*.  
 Roebuck, J. A., Northern Circuit, *Bath*.  
 Solicitors withdrawn or unsuccessful :  
 Harvey, D. W., *Marylebone*.  
 Wilks, J., *St. Albans*.  
 Wire, D. W., *Boston*.

## DEFECTS IN MODERN ACTS OF PARLIAMENT.

*The Times* of the 22nd July has some very able and just remarks on the mischiefs of modern act-of-parliament-making, which it says, are becoming so positively intolerable, that something effectual must be done to remedy them :—

"We have had," says the editor, "various tinkering endeavours to remedy them, but, so far as we can observe their effects, the result has been to make confusion worse confounded."

"The introduction of 'interpretation clauses' has tended somewhat to the shortening of the language of acts of parliament; but on the other hand, it has led to grave difficulties in giving a consistent construction to various sections of the same act, to increased litigation as a consequence, and to a greater laxity in the language of acts."

"The 'consolidation acts' have done far more towards securing one sort of brevity—that which concerns copying-clerks and printers; but, not improbably, at least as much more towards augmenting those difficulties and adding to litigation. The defunct Health of Towns Bill seems to have opened the eyes of our representatives to the rapid approach which we are making to inextricable confusion, when a question as to the effect of one of its clauses led to the explanation that it would embody in that bill nearly 800 sections of several other acts. The house came to a stand-still at once; for, in all likelihood, there were not a score of its members aware that they were merely about to do for towns in general that which they had been unconsciously doing, perhaps on the same day, for towns in particular."

"Take a bill of the present session for the improvement of any given town. The number

<sup>a</sup> The Queen's Ancient Serjeant is placed in this List, having formerly been in parliament, though not in the last.

of its own clauses may be safely estimated at not less than 60. In order to make it a complete measure, the following acts of the present session would be incorporated with it:—The Towns' Improvement, the Commissioners, the Water Works, the Markets and Fairs, and the Gas Works Clauses Acts, to which the Royal assent has already been given; the Police and the Cemeteries Clauses Bills, portions of the Railways Clauses Consolidation Act, 1845; and, virtually, the whole of the Lands Clauses Consolidation Act, 1845; and various provisions of about half-a-dozen other recent acts. A complete act of the present session for the improvement of a town may fairly be taken to consist of (in round numbers) ONE THOUSAND SECTIONS, which, if printed in *extenso*, like the octavo edition of the Statutes at Large, would make a volume of about 300 pages. Such an Improvement Act would have an interpretation clause of its own, and would embody about half-a-score more interpretation clauses, in some particulars probably differing from it, and conflicting among themselves. If, however, instead of so strong a case as this, we turn to bills for the construction of railways, docks, or other public works, of which scores are passed without the legislature being conscious of what they are doing, we shall find that *very few if any of them consist of less than FIVE HUNDRED SECTIONS, with four interpretation clauses.*

"That laws of this sort should be uncertain can create no surprise. That they should occasion no more litigation than they do is the wonder. That parliament should be besieged every session by hundreds of public bodies for acts to amend their acts, for means to avoid lawsuits, is the natural consequence.

"Contrast with a modern act the statute 9 Henry 3, c. 6:—"Hæredes maritentur absque disparagatione." Those four words of wretched Latin are the whole of that statute, which was for four centuries an important portion of Magna Charta.

"The grand difference between the ancient and the modern statutes is, that the one consists of a string of mere propositions, while the other enacted a principle. The honourable member for Newark had this difference, we doubt not, in view when he said that more scope must be given to magistrates in the interpretation of acts of parliament than they now possess. If parliament merely enacts a principle, the courts must find means to carry it into effect, as they did in former days. If the judges under the Tudors and Stuarts could be safely intrusted, as experience has proved to be the case, so to interpret and give effect to our ancient statutes as to form the foundation of those liberties which we now enjoy, it cannot be maintained that, with all our advantages of free discussion and their independence of the crown, a similar duty may not with advantage be imposed on the present bench; and if the Barons of Runnymede could compile statutes which required no amendment for six centuries, there surely has been no such degeneracy of our laymen since their days as to render it hope-

less that the report of a lay commission might throw considerable light on the manufacture of acts of parliament."

## LEGAL EDUCATION.

### REPORT OF THE SELECT COMMITTEE OF THE HOUSE OF COMMONS.

#### *Means for the improvement and extension of legal education in England and Wales.*

HAVING gone in sufficient detail into the investigation of the existing state of legal education and its effects, the committee proceed to submit to the house the results of their inquiries into the means adopted or proposed, in order to meet those deficiencies.

The efforts hitherto made in this view, have originated with the universities, and other constituted bodies, or with individuals, and have reference either to legal education generally, or to the special education suited to professional purposes. Those in which the universities may claim a part have been few and unsuccessful. The University of Oxford, in 1844, made an attempt to institute an examination for all persons.

"The Regius Professor of Civil Law was to testify to the fitness of the candidates intending to proceed in law, and they were also, previously to proceeding to the higher degree in law, to write upon some given subject for the professor. This was a very limited measure of reform. It reduced itself simply to this, that it substituted for the present practice of waiting for a certain period, and reading or being supposed to read three lectures (the positive reading of these lectures having been disused for some time), a single dissertation on any thesis which related to the science of the civil law, to be first approved by the regius professor, then to be read publicly in the school, and afterwards delivered into his hands. The dissertation was not required to be in Latin as at present, nor was there any other test proposed beyond the approval of the regius professor. The whole test by which the university proposed to prove the fitness of the persons for either of its law degrees, amounted to no more than a single dissertation, an obligation imposed on each candidate to lay it before the university. Those who know what feeble evidence such documents afford of competency or assiduity, and how unsafe it is to rely, in such arrangements, upon the accuracy or severity of private examinations, will hardly consider the intended statute as more than another form added to what already existed, and very unlikely to produce the wide and substantial results attainable by a really effective legal education. Such as it was, however, it was not permitted to pass; owing apparently

to local and temporary circumstances, unconnected with its own merits or demerits, the proposition of the heads of houses was thrown out by a considerable majority of the convocation. The measure has not been resumed, though still favourably entertained, it is understood, by the heads of houses. Its value consists in the recognition it implies of the necessity of improvement, and in the disposition to meet it by new arrangements. The other universities have made no advance of a positive nature beyond the position which has been stated they occupy in the commencement of this report, but there is no reason to suppose there is more unwillingness amongst them than in the University of Oxford to admit such alterations as, without disturbing the other arrangements of the academical course, would satisfy the wants, so generally admitted, of the public."

The first exertions to meet the demands of the profession, especially of the barrister, were met with in Ireland. From time to time, attempts were made to render the single Inn of Court there effective as an institution for the communication of legal instruction, but with little or no result. Private energy endeavoured to provide a substitute.

"In the year 1839, an institution under the name of the Dublin Law Institute, for the purpose of affording a systematic legal education to both branches of the profession, was formed by Mr. Tristram Kennedy, and opened in the following year. It was at first governed by a council (invited by circular from Mr. Kennedy, who acted as principal), composed of the most eminent members of the Irish bar. The council framed rules and regulations for the extension and management of the society, and any member of the profession might become either fellow or associate of the society, in conformity to the rules so made. In the second year of its existence, the benchers of the King's Inn became connected with it; they took the designation of fellows of the society, approved of the professors who had been teaching in the institution the year previous, and accepted and exercised the power of re-constituting in some respects the council and the society. The society had till then sought a charter of incorporation, but on the benchers becoming associated with it, it deemed such connexion equivalent to any advantages which a charter could confer, and the measures then in progress for obtaining it were in consequence for the time abandoned. The system was carried on; instruction delivered through means of lectures to classes by four professors, barristers of standing and distinction, in departments of equity, common law, law of property and conveyancing, and medical jurisprudence; to which was subsequently added a chair of criminal law. With each of those chairs was connected a course of class instruction; the attendance on which, how-

ever, does not appear to have been at any time very general. In addition to lecture and class instruction, it was not unusual for the pupils to attend the courts, and the professors were in the habit of taking advantage of this circumstance, and placing before their classes, in the common law department, the pleadings in cases pending at the time; a practice which had the effect of exciting the attention of the student, who, in many instances, watched with a lively interest the progress and issue of such proceedings. The funds for carrying on the project were for the first year derived from the fees paid by the classes. During the second year they proceeded from the same source, and from a grant of 400*l.* by the benchers of the King's Inn, a like grant of 100 guineas from Lincoln's Inn, and a like grant of 100 guineas from Gray's Inn, together with some small presents, donations, and subscriptions from fellows and associates of the society. The original fee required for each of the courses of lectures was from two to five guineas, according to the nature or extent of the course. These funds were hardly adequate to the maintenance of the institution. After defraying house-rent, 40*l.* a year, and other incidental expenses, such as publication of reports and papers connected with the society, arising from various causes, little remained for its other objects. The first year a sum only of 113*l.* 15*s.* 6*d.* was left to remunerate the principal, professors, and secretary, for their services. The smallness of the funds soon compelled retrenchments. The first year, from the greater number of pupils in attendance, the institute was enabled to publish lectures and reports: the same number not having attended, and consequently the same amount not having been received from the classes in the second or third year as in the first, the intention of publishing annual reports was surrendered. This falling off of attendance is not, however, to be ascribed to remission of zeal, a greater number entered the first year, as might be expected: the list comprised the students not only of the last but of three or four years previous, and who had hitherto no opportunity of attending any similar institution in the country. It is farther to be observed, that the institution was open to all: and not only were solicitors placed in the council, with a view to their superintending that portion of the education which referred more immediately to their own profession, but additional advantages also were proposed to be given by admitting articled clerks or apprentices at a lower fee than students preparing for the bar. It was intended also, as funds and other circumstances should permit, to enlarge the number and subjects of the courses, and gradually to add lectures on constitutional law, international law, commercial law, the laws affecting and regulating the offices of coroner and magistrate, &c. These projects, and indeed the general operations of the society, were interrupted in the month of May, 1842: an application was made to the benchers of the King's Inn for a re-

newal of their grant of the previous year, that grant having been to meet the then current year's expenses of the institute; but the application not having received their favourable consideration, the professors of the institute decided upon discontinuing their courses of instruction for the future. In the month of November, 1845, however, it was re-opened, and the lectures revived by a course in the common law department, delivered by Mr. Napier, Queen's Counsel. To this course there was free admission, and the average number of persons in attendance was 115 daily. Mr. Napier's course was followed by another in the equity department, delivered last term. The original council had not resigned, but the grant from the benchers having been altogether withdrawn, the institute stands for the present in a precarious situation.

"It is obvious that the radical defects of this project are attributable to the restricted and uncertain nature of its operations. Instead of receiving the co-operation and direction on which it originally calculated, from the authorized representatives of the bench and bar, in the society of the King's Inn, it is at present deprived of all pecuniary aid from that quarter, and whatever countenance it receives, is to be considered solely personal and not collective. It is not only a purely voluntary association, but one which, after the recent transactions, is regarded as scarcely sanctioned by the bench or higher bar. Designed for professional utility, these are formidable obstacles for the Society to contend with, nor are they likely to be conquered but by a renewal of former friendly relations. A better security, however, seems to be an incorporation, by charter or act of parliament, and such is the view which appears to be entertained by the society itself."

In England, similar efforts, though somewhat more recently, have been made, by bodies analogous to the Society of the King's Inn, by the Inns of Court; but instead of waiting for the formation of a voluntary society, or repudiating such when formed, they have themselves taken the first steps in the same direction, and applied their own funds, time, and exertions to such purposes.

"Lord Brougham, who has not been backward in promoting by counsel and co-operation these changes, states, 'It was the opinion of the delegates from the inns of court, over whom I presided, that each inn should appoint one professor, and that the fifth professor should be appointed by the whole. It was also added that a preference should be given in the calls to the bar to those who had attended, and brought a certificate of their attendance, upon those courses; that one or two courses should be required, and that no person should be allowed to be called to the bar who had not attended those courses, unless

he had been entered five years.' The only inducement to attend, as far as he recollected, was, that instead of being five years on the books, which they now are required to be, unless they have the degree of Master of Arts, they should have the same benefits as if they had taken the degree of Master of Arts. The professors chosen are to lecture upon common and criminal law, constitutional law, equity, and the law of real property. None of the inns of court have recommended that there should be a public examination to qualify. They doubt whether, without the help of the legislature, they would have the right to do so; (an opinion from which, however, Lord Campbell dissents.) The professors are to be remunerated partly from fixed salaries, payable from the treasuries of their respective inns, and partly by fees, and are to continue their duties for a period of three years. The details of this plan, as well as those of others, will be more particularly understood by a reference to the original documents, presented by witnesses, and printed in the appendix.

"Though no decision can yet be come to as to the expediency or efficiency of these measures, one point is at least certain, that it is an important step, and that the earnestness with which it has been prosecuted by the inns of court is a good evidence of their desire to secure for their plan the extension and permanence, so much to be desired in such arrangements.

"In Ireland similar attempts have not been made on the part of the King's Inn; on the contrary, the first step which might be considered, if not essential, at least of importance, for defining and securing the functions and authority of the society itself, has been resisted. We have already seen that the charter formerly granted was soon withdrawn, at the instance of the bar itself, at a meeting of the 'Utter (Outer) Bar,' 24th January, 1793, Mr. Fletcher (the late Judge Fletcher) in the chair, and that the act of parliament confirming the charter, with the consent of the barristers, was repealed. At present opinions are divided upon the nature and extent of its powers; and this proves, to a certain degree, an obstacle on the part of that body, to the originating or maintaining an effective system of legal education."

The committee then bring under notice the measures taken by the second branch of the profession, the solicitors, to provide for the educational wants of its members.

"We have already stated, in addition to societies incorporated by charter, such as the Law Incorporated Society of London, there are, in most of the principal towns, voluntary societies for the promotion, by lectures and classes, of the instruction most needed in their several departments. These institutions, besides the advantage of libraries and communication, in some degree also maintain a salutary surveillance, a sort of admitted moral

police, over the character of their associates, and of the local professional practitioners. But the articled clerks, who are so directly interested in all such arrangements, have scarcely had extended to them as yet the advantages which such societies are calculated to offer, and have, in consequence, recently made a formal application to the judges and benchers for an improved system, more immediately bearing on their own peculiar necessities.\* This application appears the more natural and necessary, as they cannot be included in the proposed reform in the inns of court. The memorial, as appears from the correspondence laid before your committee, was received with attention, and is still, it would seem, under consideration."

Something like a similar project, with a much smaller degree of success, has been carried out in Ireland. A society has been established there also, but not having the advantage of incorporation or charter, its objects, as far as education is concerned, have not extended beyond the establishment of a library, and appear principally to be directed to the maintenance and protection of professional rights.

"Nor has this example, however limited, been followed in the provinces. Indeed, it could hardly be expected, from the numbers of the profession resident in the country being so much smaller than what is usually the case in England, that even in Cork or Belfast, secondary, or branch law societies, could be easily established. The solicitors of Dublin have not been insensible to these wants, and have made some occasional legislative efforts to meet them. In 1829, they endeavoured to obtain a charter of incorporation, through Mr. Mahony, on a plan not dissimilar to that afterwards accorded to the Incorporated Law Society of London. In 1838 and 1839, the Society of Irish Solicitors caused a bill to be brought into parliament by Mr. O'Connell and Mr. Litton, 'For the better Regulation of the Profession of Attorney and Solicitor in Ireland,' which, besides determining more distinctly the respective rights of bench and bar, of the King's Inn Society, and of the two branches of the profession, provided for a better course of instruction, for examinations, and other tests of qualification for the future articled clerk and solicitor. In 1839, a second bill, in addition to the preceding, was proposed by Mr. O'Connell and Mr. Morgan John O'Connell, 'For the Incorporation of the Society or Association commonly called and known as the Society of the King's Inn, Dublin, and for enabling the same to make and ordain Orders, Rules and Regulations for the better Government of the Profession of the Law in Ireland,'" with the view of meeting the inconveniences arising

from the doubtful character and powers of the existing society; but though the benchers expressed their general approbation of the views of the attorneys, they held they could be equally attained without going to parliament, and refused to give their sanction to either bill. The result was what might have been expected, the bills were read a first time, and afterwards fell to the ground."

It is apparent from the foregoing statements that nothing sufficiently appropriate, systematic, or comprehensive, has up to this hour been accomplished to meet the demands, professional or unprofessional, for legal education. What has been effected derives its chief value from the evidence which it affords of a general disposition to admit the existence of the want, and, as far as circumstances may allow, to provide for it. To this feeling there is no exception, though, of course, it varies considerably in the several bodies.

"The inns of court are more zealous than the universities, and some of the universities more so than others; but it is in the mode and means by which this disposition may best be rendered operative that all the difference lies; each judging after individual pre-conception or experience, it is only by a dispassionate comparison and consideration of each that the legislature or the public can arrive at a fair decision of what ultimate course should be adopted for all. To this inquiry, to the arrangements which may appear most suited and most practicable, in the different stages, to the different bodies, and different classes for whom they are intended, your committee now proceed to address themselves."

The first question which naturally demands consideration is, where and by what means is that elementary education to be provided, which ought to be common to all classes, unprofessional and professional, and form the preliminary studies special to either branch of the profession?

"In seeking where it can with most propriety be carried on, we are at once attracted to the universities and other collegiate establishments of the empire. The next question will be, By what arrangements can these establishments be made more subservient to such a purpose? Both questions have been the subject of much inquiry and discussion.

"The constitution of our universities, scarcely excepting the University of London, is so contrasted to that of most of the universities of the Continent, that any conclusions drawn from the latter will require great qualification and caution in their application to the former. Our universities are designed, or at least have been applied as instruments for the general education of all classes, rather than as institutions for the special education of the learned

\* At the Incorporated Law Society, lectures are delivered chiefly for the use of articled clerks.

professions. They resemble one great faculty of arts and sciences, or what in foreign universities is technically called of philosophy, amongst high schools the highest, rather than an aggregate or university of several faculties, of co-equal extent and right, such as theology, jurisprudence, medicine, &c., each forming a special school for the several professions, whilst the faculty of philosophy is left open, as a general school, for the public at large. To this characteristic distinction may be added, what indeed is its natural consequence, a preference of the tutorial to the professorial system; in other words, of class instruction to lectures. In considering, therefore, any new arrangements in our universities, in reference to legal education, these two peculiarities must be clearly kept in view, and, accordingly, from want of this, most of the witnesses who have been examined on this portion of the subject seem much embarrassed by any project which appears to countenance too near an approach to the special professional education of the Continental universities. On a more careful examination, however, of the question, and with a more accurate sense of how far such elementary education can be carried out consistently with these distinctives of our university and college system, many of these embarrassments may be avoided or removed."

Two objects should be contended for; firstly, such amount of general legal knowledge as might be easily attainable by every one who in this country is called on to fill responsible legislative or administrative situations; and, secondly, such further addition to this elementary knowledge as might be required by students who, from peculiar circumstances, may desire to push their studies further. The question is, can the universities, without inconvenience, meet both these demands?

With regard to the first, considerable difference of opinion prevails. It involves many considerations:—what is to be the nature and extent of such studies; are they to be obligatory or voluntary; are they to form additions to or portions of the under-graduate course; how is proficiency to be tested; and in what manner are such changes, if otherwise advisable, likely to affect, whether injuriously or otherwise, the present university courses?

"The studies in question are limited by the term itself to the mere rudiments, the general outline, the popular history of law, or, more properly speaking, of jurisprudence; and as such, it is conceived they would form a natural sequel and exemplification of similar elementary studies in mental and moral philosophy. This view does not appear to be contested, but those who not only have given it consideration, theoretically, but have also had the advantage of examining practically the obstacles it would

be likely to meet with in execution, apprehend it would not be possible to find room for such additional studies in the present under-graduate course, without deranging, and consequently neglecting or removing others, in the opinion of many, of still higher importance. It is true, indeed, that the utility of these legal elementary studies has not only been recognized by some of the Universities, Dublin for instance, but place found in the under-graduate course for their prosecution; nor is it a sufficient objection to allege that the choice of the text-book (Burlamaqui), is such as to neutralise this admission. If bad, it is easy to be remedied by the substitution of a better. The scientific course at Cambridge, and the classical at Oxford, have of late years received many additions, and each is prosecuted with an accuracy and minuteness certainly unknown to the majority of students at former periods. The same, in a more remarkable manner, has been the case in Dublin; and yet, notwithstanding these large accessions and improvements, both in matter and manner, they still stand much behind similar institutions on the Continent. It is scarcely possible that the addition of one or two text-books to those used in existing courses would so materially interfere with a system which continues in operation for three or four years, and yet these text-books, however elementary, might, if well constructed, contain the kernel of the science, and prove valuable guides and incentives to the prosecution of the science hereafter. Were this arrangement, however, on due inquiry, to prove impracticable, the second question would come under consideration, whether certain portions of the existing course might not advantageously be omitted, to make room for these? It is a just view of academical study entertained by one of the witnesses, that its chief end is not so much the acquirement of knowledge as the creating and maintaining the habits of acquiring it; nor is it less true that a few subjects well mastered, outweigh in real utility many indifferently or partially attended to. This, however, hardly affects the main question. It does not appear that, as an object of mental exercise or useful acquirement, legal studies are inferior to either mathematical or classical, and it is a question solely of time and circumstance, how much and how many of any one of them may be considered as sufficient or superabundant. If one study is to make way for another, it may fairly be debated whether the Justinian Code, as sample both of language and logic, might not supersede with advantage some of the inferior classics, or whether the rigid philological criticism of texts and metres might not with propriety give precedence to a general view of the constitution and laws of our own and other countries. It may even be doubted whether historical and classical studies might not gain by such exchange; the difficulties which they involve are scarcely to be solved without a competent knowledge of the legal and constitutional character of the states, whether ancient or modern, to which they refer. If, however,



these views be still questioned, and the apprehension be still entertained, that such change will necessitate the sacrifice of some portions of the present scientific or classical curriculum, a remedy for such evil may be found, which, independently of its service in this particular, would tend generally to the advantage of all our Universities; let the standard of the Matriculation examination be considerably raised; disembarass the Universities of those elementary or preparatory studies which belong to our grammar and high schools, and thus render applicable to higher purposes the three and four years, the most precious of life, now spent within their walls. Such an arrangement would tend not less to the advantage of these schools than to that of the Universities themselves, and still farther carry out that division of labour which, in the mental as well as physical world, is every day more and more required by the general progress of civilization.

"It is thought by some of the witnesses that this object could be equally well attained by establishing in the Universities, in addition to the under-graduate course of art and science—a course of law general and special, open to all who had passed their under-graduate course, and by attending which, for a certain period, two years, for instance, a sufficient elementary knowledge, for all general purposes of magistrates, legislators, diplomatists, and officials might be easily attained. Others suggest that the inns of court should admit to their course of instruction students from the unprofessional classes above mentioned; others again, wishing still farther to meet these wants, propose that a general course should precede the more special or elementary professional courses in any institute which might be established for the particular instruction of the bar, admission to which should be granted to the non-professional student as well as to the professional. Without depreciating unduly any of these recommendations, it may be observed, that none meet the object in view. That object is not merely that such opportunities should be presented, but that they should be taken advantage of. If the university student on completing his under-graduate course, could be induced or compelled to remain two years longer for the prosecution of his law studies in the University, or to spend that time, or at least a sufficient portion of that time in frequenting for the same purpose the inns of courts, there could be no question that such arrangement would be the best which could be desired; but not only is there no such inducement suggested by witnesses, but no hope that any can be suggested sufficiently strong to attain this end. The only motive at present likely to retain the great mass of students in the University, even during the under-graduate course, is the prospect of a degree. The degree once conferred, this motive ceases. A few, of course, might remain behind and pursue such studies, but they would most likely be those who, under all circumstances, would have pursued them. The object in view is not merely to provide for the

few who might wish to take advantage of it, but to require from the many, whose knowledge or ignorance on such subjects affect not themselves only but hereafter the public in the responsible positions in which they may be placed, some knowledge, however elementary, of the first principles and processes necessary for a due discharge of their duties. The courses above suggested do not secure this, nor does it appear any other is likely to secure it, which is not integrally connected with the under-graduate course, or at least compulsory. The nature and extent of this compulsion, how far it can be enforced by attendance on lectures, or by examinations—by one examination or by many—by testimonials, honours, or degrees, are questions not special to the study of the law. Whatever may best advance one branch of knowledge, or facilitate or abridge, or promote acquirement in one department, appears not less applicable under ordinary circumstances to others. The answer to such inquiry is one of general education; it must depend upon the progress it has made or is to make in our Universities.

"There is no institution inferior to the University in England where such studies can be introduced with advantage; but this does not seem to be the case in Ireland. The charter of the New Irish Provincial Colleges empowers them to found "chairs of law." It may be thought that taking into view the position in which they are likely for some time to be placed, there is little chance of much demand for such instruction. But it must be remembered that these colleges are at a later period to be aggregated into an University. They offer in a remarkable manner the opportunity sought for in the existing Universities, of introducing a popular course of elementary law or jurisprudence for all classes, and attendance on which, being required for the attainment of a degree, would ensure its extension to all those to whom such elementary knowledge would be applicable. Nor would its advantage to the professional classes be less; it would form a good preparation for those higher studies to which the student would have to proceed, in institutions intended for the more special education of the barrister or solicitor. And if at the onset the limited number of students or other causes should proportionably limit the peculiar department of such professorships, there might without difficulty (as is usual in all incipient establishments) be aggregated under the same professor one or two other cognate departments. The professorship, though specifically of law and jurisprudence, might embrace, until it should be found necessary or expedient to divide them, courses also of political geography, statistics, and political economy, as subsidiary and supplementary to those of jurisprudence."

On the second question, viz., the propriety and practicability of adding new courses, and enlarging the present in the law faculty, (if so it may be called,) of existing universities,—opinions, if not unani-

mous, are not so divided as on the first. The object held in view by some, is to afford, as already stated, opportunities for at least elementary education to the general student: others propose to advance, and are disposed to aim at such a scale and extent of instruction, as would meet the wants of the special student, whether professional or non-professional, and be in some measure equivalent to the law courses of foreign universities.

“ This latter plan, especially, in the case that should it be found practicable to include elementary study in the under-graduate course, appears reasonable. A faculty, to deserve the name, ought to proceed beyond introductions and preliminaries. How far this may be attainable under existing circumstances, is scarcely to be collected from any evidence submitted to your committee. The chairs already instituted have, it appears, in many instances become sinecures, not through inattention of the professor, but from indifference on the part of the student. Lectures there have been, but seldom hearers; and of the few who have attended the lectures, (the lectures being but in few cases accompanied by examinations,) no evidence exists of how many of them have profited, or to what extent. The attempt to borrow from Continental example, and to multiply new chairs, without looking first to the means of making the old more efficient, would be idle. To ensure this efficiency is the great difficulty. It depends not on lectures only, but on pupils. Pupils are not to be had, except by some distinct requirement—the evidence as to the futility of mere voluntary lectures is conclusive. That requirement again must be justified by some prospective advantage. The advantage which universities have to offer is, eligibility to lucrative and honourable situation, professional emolument, intellectual, moral, and social rank. Now the real or presumed evidence of this to the public, is the public degree. The degree may be given with or without conditions: its value, as a test, will be estimated accordingly. By a proper choice and enforcement of conditions, the universities have the means to raise, enlarge, or extend any study. This power has been already applied with good results in arts. There is no reason why it may not be applied with the same good results in law. If the granting degrees in civil and common law were made to depend on due attendance on a proposed number of courses, the results afterwards to be tested, not by one, but by a considerable number of examinations, conducted publicly by efficient and conscientious examiners, and that these degrees, so obtained, were to constitute, not so much a qualification entitling to office either in church or state, as an indispensable condition, or, at least, a ground for preference to such appointment, the hall of the professor in this country would be as crowded, and with the same bene-

ficial effects, as in Germany; for it is the application of these incitements which in Germany leads to these results. It would then be time to advance to the improvement of both courses and professors, extending those which are now too limited, giving vitality to those which are dead, adding others which are yet unthought of, doing in its proper season whatever might be successively required by the advancing state of the science and the exigences of the times. A high legal school might thus be formed, in which, on one side, the elementary student might, if he thought proper, complete his course, to whatever department he proposed to devote himself, and in which the future barrister and advocate might not only prepare for, but, in some particulars, advance beyond the more special studies of his profession. It would, indeed, be a total misapprehension of the purposes and character of this university legal education to consider it as a substitute for, or even appropriate to, the peculiar purposes of the professional student. For this, as in other departments, the special institution is absolutely essential. The province of the university is to teach the philosophy of the science, and to secure instruction in those branches for which it might be apprehended the more technical character of the special institution would inadequately provide. Instruction in civil law, as bearing particularly on canon or ecclesiastical, for which there is a direct demand in our prerogative and ecclesiastical courts; constitutional and parliamentary law, not only in relation to our own country, but to others; administrative law, in its connexion with magisterial and official duty; international law, as it affects our relations to our sister nations; but above all, the great and enduring principles on which all law, whatever may be its local or temporary modifications, should rest, and which is no more than the highest morality, directed by the highest philosophy in action; this is the appropriate and honourable vocation of an university law school or faculty; and which, whilst it in no way militates against or supersedes the peculiar province of the special professional institution, will give a higher and more scientific tone to the entire study, and if carried out in a manner worthy of its dignified ends, will go far to replace law in its legitimate position; and from being, as it now is, an art depending, like others, on more or less experience, more or less dexterity in practice, will elevate it once more to a noble science; next to religion, the chief instrument for the civilization and happiness of mankind. Out of such a school we might gradually hope to see arise a succession of teachers and guides, as publicists, jurists, professors, writers, to whom we might refer with confidence for counsel in all the higher questions and graver difficulties of legislative or administrative duty, which, in constitutional states especially, must continually occur. Such men, by their distance from immediate and transient political passions and interests, and

from the more comprehensive and loftier character of their studies, would be enabled to take in with impartiality, not only present but future considerations, and in conjunction with the most eminent of the bench and bar, might from time to time be entrusted with the simplifying and consolidation of our statutes into codes, the superintendence of such proceedings on public and private bills as parliament might hereafter be induced, by the enormous accumulation of business, and sound philosophic principles, to propose. Such, to a great degree, are the functions exercised, with so much advantage, by the law faculty, and the class which it has formed, in foreign universities; and lest it might be thought that, however advisable in foreign states, it could hardly be applied in ours, it is to be observed that it is not limited by any form of government. What has been found good in Prussia, has not been found evil either in Switzerland or America."

### LEGAL OBITUARY.

1847, *May*.—Sir David Pollock, Chief Justice of Bombay. Called to the Bar 28th Jan. 1803, by the Middle Temple.

*June 17*.—Joseph Laing, jun., solicitor, of North Shields, Bank Agent, and one of the Commissioners for that place. Admitted on the Roll, Michaelmas Term, 1829.

*June 21*.—David Leahy, Barrister-at-Law, Judge of the Lambeth County Court. Called to the Bar, 29th Jan. 1831.

*June 25*.—John Rawlinson, Esq., magistrate of the Marylebone Police Court, aged 69. Called to the Bar of the Middle Temple, April 10, 1818.

*July 1*.—Henry Morgan, solicitor, of Cardiff, aged 56. Admitted on the Roll, Michaelmas Term, 1821.

*July 3*.—Stephen Abbott Norcutt, solicitor, of Ipswich, aged 69. Admitted on the Roll of Easter Term, 1800.

*July 5*.—Samuel Denton, solicitor, of Gray's Inn, aged 81. Admitted on the Roll, Hilary Term, 1794.

*July 8*.—Percival Thomas Torkington, solicitor, of 22, New Bridge Street, Blackfriars. Admitted on the Roll, Hilary Term, 1827.

*July 11*.—Michael Clayton, of Lincoln's Inn, Charlwood Park, Surrey, and Chester, Northumberland, Solicitor. Aged 53. Admitted on the Roll, Michaelmas Term, 1816; a Member of the Council, and lately President of the Incorporated Law Society.

*July 12*.—Ralph Harrison, Esq., of Lincoln's Inn, Barrister-at-Law. Called to the Bar 25th May, 1821.

*July 13*.—Andrew Henry Lynch, Esq., late Master in Chancery. Called to the Bar of Middle Temple, 23rd Jan., 1818.

*July 18*.—Robert Suter, of Greenwich, Solicitor. Admitted on the Roll Trinity Term, 1815.

*July 29*.—John Moore, Esq., of Lincoln's Inn, Barrister-at-Law. Aged 70. Called to the Bar of the Inner Temple 24th Nov., 1809.

### NOTICES OF THE ADMISSION OF ATTORNEYS.

#### MICHAELMAS TERM.

*Pursuant to Judges' Orders, granted since the printed List. (See pp. 224, 226, ante)*

#### Queen's Bench.

##### Clerks' Names and Residences.

##### To whom Articled, Assigned, &c.

Story, John Mellor, 50, Lincoln's Inn Fields, and Hemingfield, York . . . . .

John Berks, Hemingfield

Templeman, John Marsh, jun., Crewkerne . . . . .

John M. Templeman, sen., Crewkerne

Walpole, William Sturman, articled by the name of William Walpole, jun., 22, Clarendon Square; Norwich; and Boyton Lodge, near Bury St. Edmunds . . . . .

Jonas Walpole, Northwold.

Young, Horace, Church Row, Limehouse, and Lincoln's Inn Fields . . . . .

John Young, Sise Lane

J. Whitehouse, Lincoln's Inn Fields.

### NOTICE OF APPLICATION TO RENEW CERTIFICATE.

#### MICHAELMAS TERM.

Ratcliffe, Robert, New Mills, in the Parish of Glossop, Derbyshire.

### ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

#### Common Law Courts.

#### POOR LAW AND MAGISTRATES' CASES.

#### AFFIDAVIT.

See Attachment; Notice to Justices.

#### AGGRIEVED PARTIES.

See Notice.

#### APPEAL.

1. *Grounds of appeal.—Settlement.—Emanicipation.*—Grounds of appeal against an order of removal stated a settlement acquired by the pauper's grandfather, and that after the acquisition of that settlement, the father was an unemancipated member of the grandfather's

family; and that neither the pauper nor his father had gained any settlement in their own right. *Held*, sufficient, without enumerating and negating the modes in which the pauper's father might have been emancipated. *Reg. v. Inhabitants of Rothwell*, 7 Q. B., 574 n.

2. *Mandamus*.—*Costs*.—Where a court of quarter sessions dismissed an appeal on the ground that, according to the practice at sessions, the appeal had not been properly entered and respited at the previous sessions, the court made a rule absolute for a mandamus to the sessions to hear the appeal.

*Held*, (*Wightman, J., dubitante*), that the appellants were entitled to the costs of the mandamus. *The Queen v. The Justices of London*, 33 L. O. 583.

3. *Sessions*.—*Practice*.—An appellant parish has the option of appealing to the next practicable sessions, either after the service of the order of removal, with the other documents required by the 4 & 5 W. 4, c. 76, s. 79, or after the actual removal of the pauper. *Ex parte the Overseers of the Township of Leeds*, 33 L. O. 567.

See *Service*.

#### ARTICLES OF THE PEACE.

*Power of justices out of sessions to commit*.—Articles of the peace were exhibited against *A.* at the quarter sessions of the county of *H.*, and he was by the court ordered to enter into recognizance before one or more justices of *H.* to keep the peace for six calendar months thence ensuing. Under the warrant of two justices of *H.*, *A.* was brought before two justices of the same county to show cause why he should not enter into the recognizance, and he then refused to do so; whereupon the justices last mentioned committed him to the county jail for the then residue of six calendar months from the date of the order of quarter sessions, unless in the meantime he should enter into the recognizance.

*Held*, that the justices had no power to commit, and that the prisoner was entitled to be discharged on *habeas corpus*. *Ashton's case*, 7 Q. B. 169.

#### ATTACHMENT.

*Subpœna*.—*Affidavit*.—The affidavits in support of an application for an attachment for disobedience to a crown office subpœna to appear and give evidence before justices touching a pauper settlement, must show that a proper complaint was made to the justices. *The Queen v. Vickery*, 31 L. O. 154.

#### ATTORNEY'S APPEARANCE.

See *Bastardy*, 2.

#### BASTARDY.

1. *Compromise of indictment*.—*A.* was indicted for disobedience to an order for payment of money under a bastardy order; he compromised the indictment by paying the parish money and the costs. He afterwards had reason to think that the indictment could not have been maintained, and he brought assumpsit to recover back the money he had

paid. *Held*, that the action was not maintainable. *Goodal v. Loundes*, 32 L. O. 589.

2. *Order*.—*Appearance by attorney*.—A person against whom an application is made for an order in bastardy, under the 8 & 9 Vict. c. 10, may appear before the magistrates by attorney or counsel.

An order made according to the form given in the schedule annexed to the act, which states that the proof was given in the presence and hearing of the attorney appearing on behalf of the putative father, is sufficient, although it was alleged in a former part of the order that the putative father appeared in person. *The Queen v. Shipperbottom*, 34 L. O. 63.

3. *Order of filiation*.—An order of filiation, under stats. 4 & 5 W. 4, c. 76, s. 72, and 2 & 3 Vict. c. 85, ss. 1, 3, stated that the application for the order was made by the overseers of a township, but did not show that the township was not included in a union and had no guardians: *Held*, on motion by the putative father to quash the order, which had been brought up by *certiorari*, that the order was bad, as not showing that the overseers were the proper parties to make the application. *Reg. v. Smith*, 7 Q. B. 543.

Case cited in the judgment: *Reg. v. Ardsley*, 5 Q. B. 71.

#### CERTIORARI.

See *Inhabitancy*; *Commissioners' Order*; *Magistrates*; *Notice*.

#### CHARGEABILITY.

*Removal*.—An order of removal cited a complaint by the parish officers that the pauper had come into the parish, endeavouring to settle there contrary to law, and adjudicated that he had become chargeable to the parish. *Held* bad, because the complaint, as recited, did not aver chargeability, and therefore the order showed no jurisdiction. *Reg. v. Inhabitants of St. Giles in the Fields*, 7 Q. B. 529.

Cases cited in the judgment: *Rex v. South Marston*, 1 Str. 189; *Rex v. Inskip with Sowerby*, 5 M. & S. 299.

See *Removal*, 3, 4, 8.

#### CHURCH-RATE.

*Churchwardens and minority of vestry*.—*Who form part of vestry*.—A monition, founded on an allegation that a parish church was out of repair, issued from an ecclesiastical court, requiring the churchwardens to call a vestry for the purpose of making a rate, and the parishioners to meet in such vestry, and then and there make a rate for repair of the church and decent celebration of divine service, &c., therein. The churchwardens gave notice of a vestry meeting, and the vestry met in obedience to the monition; when the monition and notice were read the churchwardens produced a survey and estimate to which no objection was made, nor was the necessity for the repairs, &c., disputed. A rate of 2s. in the pound was then proposed and seconded, upon which an amendment stating an objection to church-rates in general,

and refusing to make any rate, was proposed and seconded, put to the meeting, and carried by a majority. The chairman then asked whether any further proposition as to amount of rate was made, to which no affirmative answer was made. Thereupon the churchwardens and other members of the meeting, being the minority of those present, made a rate. A protest was then delivered on behalf of the majority of those present. The churchwardens proceeded against G., a party so rated, in the ecclesiastical court, in a cause of subtraction of church-rate, setting forth the above facts in the libel and in the proofs propounded. The libel, &c., having been admitted to proof, G. declared in prohibition. On general demurrer to the declaration (by which all the facts appeared): *Held*, 1. That the persons voting for the amendment must be considered as having declined to join in the proceedings of the meeting, the amendment having no reference to the object for which the vestry was summoned under monition; that the persons so voting, therefore, left the question in the hands of the remainder; and that the rate was legally made. 2. That it was unnecessary again to put the rate formally to the vote, inasmuch as it had been in fact taken into consideration and negatived by the amendment, though it would have been more regular not to put the amendment. Judgment for defendants in prohibition. *Gosling v. Veley*, 7 Q. B. 406.

Cases cited in the judgment: *Olknow v. Wainwright*, or *Rex v. Foxcroft*, 2 Burr. 1017; 1 W. Bl. 229; *Rex v. Monday*, 2 Cowp. 530; *Rex v. Hawkins*, 10 East, 211; *Rex v. Parry*, 14 East, 549; *Taylor v. Mayor of Bath*, 3 Lunders, 324; *Veley v. Burder*, 12 A. & E. 308.

#### COMMISSIONERS' ORDER.

**Mandamus.**—*Certiorari*.—The Poor Law Commissioners made an order directing the overseers of the townships of a union to assemble and appoint a barrister to act as returning officer at a certain election of guardians. A rule for a mandamus to the overseer having been obtained, *Held*, that there was nothing on the face of the order to show that the Poor Law commissioners had exceeded the jurisdiction given them by the 4 & 5 W. 4, c. 76.

*Held*, also, that if the Poor Law Commissioners had power to make the order, the validity of it could not be discussed in showing cause against a rule for a mandamus, unless the order had been first brought into this court by *certiorari*. *The Queen v. The Overseers of the Oldham Union*, 34 L. O. 229.

#### COMPROMISE.

See *Bastardy*, 1.

#### COSTS.

See *Appeal*, 2; *Order*, 1, 2.

#### EMANCIPATION OF PAUPER.

See *Appeal*, 1; *Settlement*, 1.

#### EXAMINATIONS.

See *Settlement*, 2, 3, 5.

#### HIGHWAYS.

**Time for appealing.**—Where a statute empowers justices, on information laid at special sessions, to make orders on specified parties for the payment of money, notice of the intended information being first given to such parties, and empowers them to appeal, giving notice of such appeal "within six days after such order" "shall be made or given," the time for notice of appeal runs from the making of the order, not from the service.

So held on appeal, under sect. 3 of stat. 4 & 5 Vict. c. 59, against an order of justices, under sect. 1, requiring a surveyor of highways to pay money out of the highway rates in aid of turnpike funds. *Reg. v. Justices of Derbyshire*, 7 Q. B. 193.

Cases cited in the judgment: *Rex v. Justices of Pembrokeshire*, 2 East, 213; *Rex v. Justices of Staffordshire*, 3 East, 151; *Rex v. Justices of Lancashire*, 8 B. & C. 593.

#### HIRING.

See *Settlement*, 3.

#### INHABITANCY.

**Certiorari.**—An order of removal, made 18th Jan., purported to be founded upon a complaint that the paupers "have lately intruded and come into the said parish of G., and have become actually chargeable to the same," and directed them to be removed to B. The first practicable sessions for an appeal were held on 11th April, and were adjourned to 9th May. No appeal was entered at the sessions in April, but, according to the practice of that court, an appeal entered at the adjourned sitting in May would be in time. The overseers of B. moved for a *certiorari* on 25th April: *Held*, that although, the time for appealing had not expired, the overseers of B. might obtain a *certiorari*; and that the order was bad, as being founded on a complaint which did not sufficiently allege that the paupers had come to inhabit in G. *Reg. v. Willats*, 7 Q. B. 516.

See *Jurisdiction*, 1.

#### JURISDICTION.

1. **Removal.**—"Coming to settle."—*Inhabiting.*—An order of justices, removing a pauper from parish B. to parish P., both in the county of M., recited a complaint by the parish officers of B. that the pauper "intruded and came into the said parish of B., and hath actually become chargeable to, and is now inhabiting in, the same parish;" and it adjudged "the same to be true." *Held*, that the order showed jurisdiction, though it did not state that the pauper had come into the parish with intent to settle, as required under stat. 13 & 14 C. 2, c. 12, s. 1; inasmuch as stat. 35 G. 3, c. 101, s. 1, gives a new power of removing paupers inhabiting and actually chargeable, with reference to the purpose with which the pauper inhabits.

The order appeared to be made by, and upon complaint before, "two of her Majesty's justices of the peace acting in and for the county of M.;" and it contained no further statement of the place where it was made, ex-

cept "*M. to wit*" in the margin. *Held*, that it sufficiently appeared that the complaint and order were made in *M.*

The order directed the parish officers of *B.* to remove the pauper "on sight hereof." *Held*, not invalid on that account. *Held*, also, that it sufficiently appeared that the justices were justices of the county of *M.* *Reg. v. Inhabitants of St. Paul Covent Garden*, 7 Q. B. 533.

Case cited in the judgment: *Rex v. St. James in Bury St. Edmunds*, 10 East, 25.

2. An order of removal, having the marginal venue "*Borough of K.*" and commencing, "upon the complaint of the churchwardens," &c., "unto us *G. C.* and *T. F.*," "being two of her Majesty's justices of the peace for the said borough of *K.*," does not sufficiently show that the justices heard the complaint within the jurisdiction. The complaint should appear to have been heard by justices "*in and for*," &c. *Reg. v. Inhabitants of Stockton*, 7 Q. B. 520.

See *Articles of the Peace; Chargeability; Maintenance; Notice; Rate*, 2.

#### MAGISTRATES.

*Certiorari.—Return.*—In September *A. B.* was convicted before magistrates of harbouring seamen, under the 7 & 8 Vict. c. 112; in November a writ of *certiorari* issued to remove the record of the conviction into this court; in December a return was made; and in January the points for argument were given. The conviction omitted to set out the evidence taken before the magistrates. The court discharged a rule obtained either to quash the return, or to take it off the files of the court, in order that the conviction might be amended by setting out the evidence.

The *certiorari* required the magistrates to return the record of a conviction in which *A. B.* was convicted of certain trespasses and contempts.

*Held*, that although only one offence was committed, the conviction was properly described, and that after the magistrates had returned the right conviction it was too late to take such objection. *The Queen v. Turk*, 34 L. O. 133.

See *Jurisdiction; Notice; Order*, 3; *Production of Documents*.

#### MAINTENANCE OUT OF WORKHOUSE.

*Summons to show cause.—Form of order.—Jurisdiction.*—An order of justices under stat. 4 & 5 W. 4, c. 76, s. 27, for relieving a pauper elsewhere than in the workhouse, cannot be made without summoning the parties who will be burdened by such order to show cause why it should not be made.

When such relief is to be given in a parish forming part of a union, *quære*, whether the order should be addressed to the overseers or to the guardians. *Quære*, also, whether in the case of such a parish, the order sufficiently shows jurisdiction, under sect. 27, if the justices only describe themselves as "two of her Majesty's justices of the peace, acting in and for

the county of *A.*, and usually acting at *B.*, within the district of the *C.* poor law union," (in which the parish lies,) "in the said county." *Reg. v. Totnes union*, 7 Q. B. 690.

#### MANDAMUS.

See *Appeal*, 2; *Commissioners' Order*.

#### NOTICE.

*Certiorari.—Affidavit.—Parish aggrieved.—Jurisdiction.*—Appellants against an order of removal served on respondents an order of sessions quashing the order of removal. The order of sessions appeared by the caption to be made at sessions holden before *B.*, *J.*, *M.*, and other their associates, justices assigned, &c., in the county. The respondents obtained a rule nisi for a *certiorari* on affidavit of notice to *B.* and *J.*, the affidavit stating that *B.* and *J.* were two of the justices present at the sessions, and two of the same justices whose names appeared in the caption. The notice was signed *A.* and *H.*, attorneys for the inhabitants of the said parish of *S.*, (the respondent parish); and another of the affidavits on which the rule was obtained stated that *A.* and *H.* "were retained and employed by and on behalf of the inhabitants of the parish of *S.* in the prosecuting and conducting an appeal," &c., (describing the respondents and the order of removal).

*Held*, sufficient evidence of service upon and by the proper parties, under stat. 13 G. 2, c. 18, s. 5, in default of evidence to the contrary.

The affidavits showed that the order of removal was made and suspended on 29th July, and that the suspension had never been taken off; that the order was served on the appellants on 7th August; that the appellants, on 14th October, served on respondents a notice, dated 6th September, stating the intention of appellants, at the next sessions, to enter and try an appeal against the order of removal, in which notice was incorporated a statement of grounds of appeal; that by the practice of the sessions, 8 days' notice of trial was required; that the next quarter sessions were held 17th October; that no appeal was then prosecuted, or entered and respited, as one of the deponents, respondents' attorney, had been informed and verily believed, that the respondents did not attend at the October sessions, nor at the following Epiphany sessions, and heard nothing more of the appeal until 15th Feb. following, when a document purporting to be a copy of an order made on appeal at the Epiphany sessions held on 4th Jan., for quashing the order of removal, was sent to respondents by the vestry clerk of the appellant parish. A rule for quashing the order of sessions having been obtained on these affidavits, and no affidavits being filed in answer,

*Held*, that the October sessions were the next practicable sessions after the order of removal, and that if the appeal was not entered and respited at those sessions, the next Epiphany sessions had no jurisdiction to entertain it.

*Held*, also, by Lord Denman, C. J., Williams, and Wightman, Js., that the statement of the respondents' attorney in the negative, "as he

had been informed and believed," remaining unanswered by the opposite party, showed sufficiently that the appeal had not been entered and respited at the October sessions, *dubitante Patteson, J.*

*Held*, also, that the respondents were aggrieved (within the provision of stat. 13 & 14 C. 2, c. 12, s. 2,) by the order of sessions, and that this court was bound to interfere on their behalf. *Reg. v. Inhabitants of Sevenoaks, 7 Q. B. 136.*

See *Order, 1 ; Rate, 2 ; Removal, 4 ; Service.*

#### ORDER.

1. *Costs.—Service.—Notice to produce.*—An order of quarter sessions, on dismissal of an appeal against a poor-rate, that the appellant shall pay costs "immediately upon service of this order or a true copy thereof," is valid; for the order is a judgment of the sessions, and therefore, service of the original, or production of it on service of a copy, cannot be required.

On indictment for discharging such order, with an averment that a true copy of the order was served on defendants, and they had notice of the said order and of the contents thereof, the prosecutors produced in court the minute book of quarter sessions in which the order was entered, and a copy of the order, on parchment, which was an authentic extract of the minutes; and they offered parol evidence that a true copy of the order was served on the defendants, and the contents of the parchment at the same time read over to them: *Held*, that (whether the parchment was an original or not) parol evidence as to the copy served was admissible without notice to the defendants to produce the copy itself: for the object of the evidence was only to prove notice of the order, which notice the copy was; and therefore, notice to produce it was unnecessary. *Reg. v. Mortlock, 7 Q. B. 459.*

2. *Taxation.—Costs at adjourned session.—Implied consent.*—The order for costs was made at first without stating the amount, which was left to be ascertained by the clerk of the peace; the justices then adjourned; the costs were taxed, and the amount verbally reported by the clerk of the peace at the adjourned sitting, which was not attended by all the magistrates originally present. The order was there finally drawn up, with the amount of costs as taxed: *Quære*, by *Coleridge, J.*, whether the justices, at the adjourned sitting, had jurisdiction to settle the costs. But, evidence having been given, on the trial of the indictment, that both the appellants and respondents had an opportunity of attending the taxation, and knew of the proceedings at the adjourned sessions, and took no objection: *Held*, on motion, after verdict of guilty, for a new trial or to enter a verdict for defendants, that the irregularity, if any, was no ground for disturbing the verdict. *Reg. v. Mortlock, 7 Q. B. 460.*

3. *Removal.—Signature of justices.*—An order of removal purported to be made by two justices for the jurisdiction, but did not set forth their names in full; in signing the order,

one justice abbreviated his christian name, the other denoted his christian name by an initial only.

The examination on which the order was made purported by its caption to have been taken by two justices for the jurisdiction; and the jurat was "sworn before us the said justices," and was signed in the same manner as the order.

*Held*, in each case, that the signatures were sufficient. *Reg. v. Inhabitants of Worthenbury, 7 Q. B. 555.*

See *Removal, 5, 6, 7 ; Settlement, 2.*

#### PRODUCTION OF DOCUMENTS.

*Removing justices.*—The summons of a justice, requiring a party possessed of documents to attend as a witness and produce such documents on the hearing of an application for an order of removal, is not equivalent to a *subpoena duces tecum*; and secondary evidence is not admissible on proof that such summons has been served and disobeyed.

So *held*, when the person served was an overseer of the parish to which it was proposed to remove, and the summons (headed "Summons to witness") was addressed to the overseers, requiring them to produce the rate-books. *Reg. v. Inhabitants of Orton, 7 Q. B. 120.*

#### RATE.

1. *Dock dues.*—By stat. 14 Geo. 3, c. 56, s. 15, the Hull Dock Company were empowered and required, within seven years from Dec. 31, 1774, to make a basin or dock at Kingston-upon-Hull, with reservoirs, sluices, bridges, roads, &c.; by s. 18, certain lands of the crown were granted to them for that purpose; and s. 42 enacted, that in consideration of the expense the company would be at in working and keeping in repair such dock, &c., there should be payable, from and after Dec. 31, 1774, to the company, for every ship, &c. "coming into or going out of the said harbour, basin, or docks, within the port of Kingston-upon-Hull," or unlading or putting on shore, or lading or taking on board, any of their cargo, or any goods, within the said port, certain duties of tonnage (according to the full of the reach and burthen), to be paid at the time of the ship's entry inwards or clearance outwards; or, in case any ship should not enter as aforesaid, then at any time before such ship shall proceed from the said port, at the custom-house in the said port.

The company, according to the statute, made a dock in the parish of T., communicating with the harbour or river Hull, and the river Humber. The dock is in their own land, granted as above. They have no right of property in the harbour, and occupy nothing on the shores of the Humber, except the entrance basin of the dock. The port of Hull (in the popular sense, adopted in this case) includes the Humber to the mid stream, and all ships using the dock pass through this portion of the Humber. Some discharge and load their cargoes in the Humber or the harbour, without using the



dock or entering upon any property belonging to the company; but these, as well as the ships entering the dock, pay the tonnage duties: *Held*, on appeal against a poor-rate for the parish of T.

1st, Even assuming that the word "harbour" in s. 42, was synonymous with "port," so that the duties attached on all ships entering the port, whether they came into the dock or not, still that the company were rateable for the duties on ships which actually did enter the dock, those duties being profits of the company's land in T., accruing there. But 2ndly, That they were not rateable in T., for the dock in respect of duties which were paid by ships not entering or using it. *Reg. v. Hull Dock Company*, 7 Q. B. 2.

Case cited in the judgment: *Reg. v. Bristol Dock Company*, 1 Q. B. 535.

2. *Allowance. — Notice. — Jurisdiction.*—In the written notice of a rate, published by the parish officers and proved before the justices, it was stated that the rate had been allowed "by one of her Majesty's justices of the peace, acting within the Metropolitan district, pursuant to the stat." &c.

*Held*, that if this did not sufficiently show that the magistrate was one of those authorized by stat. 2 & 3 Vict. c. 71, s. 14, to perform the functions of two justices, the notice of allowance was not therefore void; stat. 17 G. 2, c. 3, s. 1, requiring publication of the rate only, and not of the allowance. *Reg. v. Paynter*, 7 B. & C. 255.

Case cited in the judgment: *Bennett v. Edwards*, 7 B. & C. 586.

See *Church-rate; Removal*, 1.

#### REMOVAL.

1. *Grounds of Appeal. — Separate and distinct tenement.*—A statement of grounds of appeal against an order of removal, alleging a settlement acquired by paying parochial rates for a tenement consisting of houses, since the passing of stat. 6 G. 4, c. 57, must aver that the tenement was "separate and distinct." *Reg. v. Inhabitants of Ripon*, 7 Q. B. 225.

2. *Documents before justices. — Copies to appellants.*—On application to justices for an order of removal, the settlement alleged was an interest in land acquired by the pauper as administrator. The examination stated this interest, and the grant of the letters of administration, with names and dates; and together with the examination there were sent to the appellant parish copies of letters of administration corresponding in names and dates with the letters described in the examination; but the examination did not expressly show that any letters of administration were produced before the justices, nor was any notice given to the appellants of their having been produced.

*Held*, that the examinations were not on that ground insufficient, for that it must be assumed that the letters sent to the appellant parish were before the justices. *Reg. v. Inhabitants of St. Anne, Westminster*, 7 Q. B. 245.

3. *After previous order quashed subject to a*

*case. — Fresh chargeability.*—A pauper was removed, and copies of the order, examinations, &c., sent to the parish to which she was removed; but the copy of the order of removal did not contain the signatures of the removing justices. On this objection the order of removal was quashed on appeal, subject to a case. The respondents, however, took no steps to bring the case up. Afterwards the pauper became again chargeable, having obtained no fresh settlement. *Held*, that she might (even before the time for obtaining a certiorari to bring up the order of sessions expired) be removed to the same parish as before; for that 1st, The former order was not conclusive as to the merits; and 2ndly, Not proceeding with the case granted on the first appeal did not preclude her removal on a new chargeability.

The pauper, in her examination, stated, "I am unable to maintain myself, and am now residing in, and receiving relief from, and am actually chargeable to," the appellant parish.

*Held*, sufficient evidence of chargeability. *Reg. v. Inhabitants of Great Bolton*, 7 Q. B. 387.

Cases cited in the judgment: *Rex v. Wick St. Lawrence*, 5 B. & Ad. 526; *Rex v. Wheelock*, 5 B. & C. 511.

4. *Mother and child. — Notice of chargeability.*—If a female pauper and her child within the age of nurture be removed by order of justices, *quære*, whether such order can be enforced, if the notice of chargeability does not mention the child as chargeable, and in reciting the order for removal of the mother, does not show that the child is therein named.

*Semle*, per Lord Denman, C. J., and Patteson and Coleridge, Js., that, although the order named the mother only, the parish to which the removal is made must nevertheless receive the child, if within the age of nurture, and brought with the mother.

In a notice of chargeability the words "has become chargeable" are equivalent to "is chargeable." Per Lord Denman, C. J. *Reg. v. Inhabitants of Stockton*, 7 Q. B. 520.

5. *Conclusiveness of former order.*—An order of removal was made on an examination which showed that the pauper never acquired a settlement for himself, but was emancipated in 1823; that his father was apprentice in L. in 1790, and was removed to L. under an order of removal, in 1838, against which L. had not appealed, but had subsequently maintained the father: the examinations did not set forth the circumstances of the apprenticeship so as to prove that the father acquired a settlement in L. thereby, but they showed that the father never gained a settlement after the apprenticeship.

*Held*, that the order unappealed against, for the removal of the father, was conclusive evidence of the settlement of the son. *Reg. v. Inhabitants of Brompton*, 7 Q. B. 549.

6. *Conclusiveness of former order of sessions on appeal.*—The sessions, on appeal, quashed an order of removal from P. to L., founded on examinations which stated a settlement by rent-

ing and occupying a house in *L.* for one year, at 22*l.* a year, and being assessed to the poor-rate in *L.*, which the party had paid as the occupier of the said house during his occupation. The ground of appeal was, that the examination was defective as not stating in what year or years the party rented and occupied, or that the house was rented by him in *L.*, or occupied under a yearly hiring, and the rent to the amount of 10*l.* actually paid for one whole year at the least, or that such house was actually occupied under a yearly hiring by him, and the rent, &c., paid by him for the same, or that he had been assessed to the poor-rate and paid the same in respect of such house for one year. The order of sessions stated the order of removal to be quashed on the ground of the "examination disclosing no settlement on the face thereof, and the appellants having given notice thereof in their grounds of appeal." The pauper being again removed from *P.* to *L.*, it was stated, and relied upon as a ground of appeal, that the examinations did not show any settlement acquired since the above order of sessions, and in fact no new settlement acquired. The sessions, however, confirmed the new order of removal, subject to a case stating all the circumstances of the former decision, and submitting as the question for this court, whether or not the former order of sessions was conclusive. *Held*, that this court, being enabled by the case stated to see that the former order of sessions had disposed of the substantial question, might pronounce that order conclusive, though the sessions by their last order had decided the contrary. And the latter order was quashed. *Reg. v. Inhabitants of St. Mary, Lambeth*, 7 Q. B. 587.

7. *Conclusiveness of former order of sessions on appeal.*—Appellants against an order of removal objected, in their grounds of appeal, that the examination did not properly show the residence necessary to the acquiring a settlement, and that other specified facts were insufficiently alleged; they also denied the settlement. At the sessions, this order was "on motion of the said respondents, set aside for insufficiency of examination." Afterwards the respondents again removed the paupers to the appellant township on an examination disclosing substantially the same grounds of settlement as before: *Held*, on appeal against this second order of removal, that the first order of sessions was conclusive between the parties on the point of settlement. *Reg. v. Inhabitants of Ellel*, 7 Q. B. 593.

8. *Order removing children.*—*Averment as to marriage of parents.*—*Decision at sessions.*—*Chargeability.*—Paupers were removed to the settlement of *G. B.*, as their father, on an examination stating that *G. B.* died on May 1, 1843, and his wife the previous day, leaving eight children, some of whom were the said paupers; and that the said children were residing with their said parents, *G. B.* and his said wife, until their deaths as aforesaid. On appeal, and objection taken, that the examination did not show that the paupers were legitimate, and

therefore did not warrant the order of removal, the sessions decided in favour of the appeal, subject to the opinion of this court on the question, whether or not the objection was fatal: *Held*, that the legitimacy appeared sufficiently to warrant the order of removal. Order of sessions quashed: *Semble*, per Lord Denman, C. J., that if the question submitted had been, whether or not the examination gave the appellant sufficient materials for inquiry, this court would not have interfered with the decision at sessions. That paupers are "receiving relief from," and "actually chargeable to," a township which they inhabit, is a sufficient averment of chargeability. *Reg. v. Inhabitants of Tolley*, 7 Q. B. 596.

See *Chargeability; Jurisdiction; Order*, 3; *Settlement*.

#### SERVICE OF NOTICE OF APPEAL.

Notice of appeal against a conviction under stat. 5 & 6 W. 4, c. 50, s. 72, is well served on the justice, under s. 105, if delivered at his dwelling-house, though not to him personally. *Reg. v. Justices of North Riding of Yorkshire*, 7 Q. B. 154.

See *Order*, 1.

#### SETTLEMENT.

1. *Presumption of emancipation.*—A pauper was removed to parish *A.* on examinations, which showed that he had gained no settlement in his own right, and that when the pauper was 27 years old his father had received relief from parish *A.*, while resident elsewhere.

*Held*, sufficient, for that emancipation was not to be presumed.

Although it was not stated that the pauper, at the time in question, was resident with his father or formed part of his family. *Reg. v. Inhabitants of Lilleshall*, 7 Q. B. 158.

Cases cited in the judgment: *Rex v. Oulton*, 3 Nev. & M. 62; *S. C.* 5 B. & Ad. 938; *Reg. v. Middleton in Teesdale*, 10 A. & E. 688.

2. *Certainty in examinations.*—*Order under seal.*—In an examination touching the settlement of a bastard child, (not shown to have gained any settlement since the birth,) a statement that such child was born "in or about 1833," is not sufficiently precise; since, under sec. 71, of stat. 4 & 5 W. 4, c. 76, it may be material that the birth should have taken place before Aug. 14, 1834; and the words "in or about" do not exclude the supposition that the child may have been born later.

It is not necessary that an order of justice should be sealed with wax. An impression made in ink with a wooden block, in the usual place of a seal, is sufficient, when the document purports to be given under the hands and seals of the justices, and is in fact signed and delivered by them. *Reg. v. Inhabitants of St. Paul's, Covent Garden*, 7 Q. B. 232.

Case cited in the judgment: *Reg. v. Justices of Derbyshire*, 1 Will. Woll. & Hodg. 323.

3. *Hiring.*—*Certainty in examinations.*—*Averment of being unmarried.*—A statement in an examination, that the pauper, "in or about

the year 1832," was hired as a yearly servant, is insufficient, inasmuch as the hiring might have taken place after Aug. 14, 1833, and the year's service under it would consequently have not been completed before Aug. 14, 1834, and so no settlement have been acquired, by stat. 4 & 5 W. 4, c. 76, s. 65.

A statement that the pauper, "being then unmarried and having no child or children," was hired by S. as a yearly servant, and served him under such yearly hirings, and it was not stated that, at the time of the last hiring, the pauper was unmarried and without child or children. *Reg. v. Inhabitants of St. Anne's, Westminster*, 7 Q. B. 241; vide *Reg. v. St. Paul's, Covent Garden*, 7 Q. B. 232.

4. *Mother*.—Pauper was removed on examinations showing a maiden settlement of his mother by residence, while unemancipated, with her father, who rented a tenement No. 3, Hotbath Street, in the parish of St. James, Bath. They further stated, that the pauper's father took a house, "being No. 8, Hotbath Street aforesaid," of the yearly value of 10*l.*, and was legally settled upon, occupied, and resided in, the same from March, 1819, for one year and a half.

*Held*, that "Hotbath Street aforesaid" could not be taken to mean "Hotbath Street, in the parish of St. James;" and therefore that the father's settlement was not properly ascertained. That the respondents could not avail themselves of the mother's settlement, because it appeared that the father had a settlement, which ought to have been inquired into. And that the order was properly quashed at sessions on these defects in the examinations pointed out in grounds of appeal.

The court will presume that a place in England is parochial, if nothing to the contrary appears. *Reg. v. Inhabitants of St. Margaret, Westminster*, 7 Q. B. 569.

5. *Examinations*.—*Sufficient information*.—*Conclusiveness of finding at sessions*.—An examination touching settlement stated a marriage to have taken place in the church of B. Among the grounds of appeal, it was alleged that the examination was defective, because there were two churches of B.; and this appearing in evidence to be so, the sessions refused to hear the respondents, but stated the facts for the opinion of this court, not submitting any particular question. Order affirmed, the decision being on a point of which the sessions were the sole judges. *Reg. v. Inhabitants of Bakewell*, 7 Q. B. 601 *n.*

See *Appeal*.

#### SUBPŒNA DUCES TECUM.

*Order of removal*.—*Privilege of parish officer producing documents*.—On an application before magistrates in petty sessions for an order to remove a pauper to parish A., where it is

sought to show a settlement by rating, a *subpœna ad testificandum* and a *subpœna duces tecum* may issue from the Crown Office to the parish officer of A., commanding him to attend the examination at petty sessions, give evidence, and produce the parish rate-books; and if he disobeys, this court will grant an attachment. Whether, on attending with the books, he is bound to submit them to examination, *quære*. *Reg. v. Greenaway*, 7 Q. B. 126., S. C., *Reg. v. Carey*, 7 Q. B. 131.

Case cited in the judgment: *Amey v. Long*, 9 East, 473.

See *Attachment; Production of Documents*.

#### TIME OF APPEAL.

See *Appeal*, 3; *Highways*.

#### TAXATION.

See *Order*, 2.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Lord Chancellor.

*Wragg v. Wragg*. July 29, 1847.

NEW ORDERS, (NO. 111).—ENLARGING PUBLICATION.—PRODUCTION OF DOCUMENTS.

*After publication has passed under the 111th Order of May, 1845, the time may be enlarged by the court if special grounds are shown, and if the defendant will not be prejudiced by the indulgence.*

*Semble, That it is not the usual practice to include a motion for the production of documents at the hearing, in an opposed motion for enlarging publication.*

Mr. Cooper and Mr. Edward Webster moved to discharge the order of Vice-Chancellor Wigram, refusing the plaintiff's motion for leave to examine witnesses after publication had passed, and for the production at the hearing of the probate copy of a certain will. The bill was filed in July, 1845, by one of four legatees against the defendant Wragg, the surviving executor, and G. and S. Eaton, the representatives of a deceased executor of the testator, for an account of a sum of money directed by his will to be set apart, to answer an annuity bequeathed by him to the mother of the plaintiff. Three of the four legatees were also made defendants; Wragg and E. and S. Eaton put in their answers in April, and in June 1846, to which replication was filed by the plaintiff's solicitor, but no further steps taken and no evidence produced: consequently publication passed on the 2nd day of Michaelmas term, 1846, under the 111th Order of May, 1845. The answers of the other defendants (the legatees) were not put in until June and July, 1847. The grounds for the present application were, that the solicitor for the plaintiff had made a slip in the practice by prematurely filing repli-

cation under the 93rd Order of May, 1845, before the last of the answers had come in, not being aware at the time of Vice-Chancellor *Wigram's* decision in the case of *Stinton v. Taylor*, 4 Hare, 608; that the defendants who opposed it had been as negligent as the plaintiff in not prosecuting the suit, either by moving to dismiss the bill for want of prosecution, or by setting down the cause to be heard under the 116th Order of May, 1845—and that the defendants would not be prejudiced by this indulgence to the plaintiff, as no evidence had yet been given, and as no step to dismiss the bill could be taken before next Michaelmas Term. They referred to *Arnold v. Arnold*, 1 Phill. 805; *Hemming v. Dingwall*, 1 Coop. 14, and 10 Jur. 531, (also in 32 L. O. 251); *Dallimore v. Ogilvie*, and *Cresswell v. Harris*, cited in Mr. Cooper's Report of the last case; *Yate v. Bolland*, 2 Dick. 495, and *French v. Lewsey*, 6 Madd. 50.

The other part of the motion refused by his Honour was for the production at the hearing of the probate copy of the will of the testator's deceased executor, and which Mr. *Webster* submitted, ought to have been granted as of course.

Mr. *Bacon* and Mr. *Wright*, *contrà*, urged, that the great delay which had taken place prevented the plaintiff from receiving the required indulgence, as it was entirely unaccounted for; and as no special circumstances were stated except the solicitor's mistake in the practice, and which the Vice-Chancellor did not think sufficient. In *Hemming v. Dingwall*, as reported in the *Jurist*, (*supra*), there appeared to have been only a delay of a few days. With respect to the production of the probate copy of the will, his Honour was justified in refusing it, as such application ought not to have been mixed up with the motion for enlarging publication, and had evidently been introduced merely as a makeweight for the purpose of asking for costs.

The Lord Chancellor remarked, that with regard to one part of the motion, (*production of the probate copy*), he thought the Vice-Chancellor was quite right—as to the remaining portion of it, he thought it might be granted, as both parties had been equally negligent. If the plaintiff alone had caused the delay it would have been a different matter; or if the defendant would be prejudiced by granting the motion. His Lordship said, that without laying down any principle for these applications, he thought, under the circumstances of this case, the indulgence might be granted and publication enlarged until the first day of next term, upon payment by the plaintiff of the costs of the application.

#### Rolls Court.

*Whittaker v. How*. May 22, 1847.

#### OUTLAWRY.—REVIVOR.

*The court will not allow a plaintiff in an original cause to be turned into a defendant to the revived cause, upon the ground of his*

*being an outlaw, without proof of his having become an outlaw subsequently to the filing of the original bill, or by consent.*

THIS was a motion to strike out the name of Mr. *Whittaker*, as a plaintiff in a bill of revivor and make him a defendant, upon the ground that he had been outlawed, and that a plea of outlawry would be a bar to the suit if he were continued as a plaintiff.

Mr. *Freeling* for the motion.

Mr. *Lloyd*, *contrà*, said, it did not appear but that Mr. *Whittaker* was an outlaw at the time of the bill being originally filed, in which case the outlawry would have been a good plea to the bill.

Lord *Langdale*, upon this, intimated an intention of directing an inquiry as to the time of the outlawry; but ultimately, with the consent of Mr. *Lloyd*, made the order asked for, on the payment of the costs of the application.

#### Vice-Chancellor of England.

*Baldwin v. Damer*. July 3rd, 1847.

DISMISSAL OF BILL.—ANSWER.—16TH, 66TH, AND 68TH ORDERS OF MAY, 1845.

*Where, through the negligence of plaintiff, certain defendants have not answered the bill, and one of the defendants is entitled to move to dismiss the bill for want of prosecution, a motion for that purpose by such defendant granted, and the bill ordered to stand dismissed, unless plaintiff filed his replication within a given time.*

THIS suit was originally instituted for the purpose of restraining the directors of the Great Munster Railway from dealing with a sum of 21,000*l*. The injunction was refused, and the bill not having been amended within the time allowed by the orders of the court,

Mr. *Hubback* now moved, on behalf of one of the defendants, to dismiss the bill for want of prosecution.

Mr. *Welford*, on behalf of the plaintiff, urged, that the defendants were sixteen in number, and that three or four of them had not put in their answers on account of negotiations going on between them and the plaintiff; and he cited the case of *Arnold v. Arnold*, Leg. Obs. May 15th, 1847, lately decided before the Lord Chancellor, as authorising the delay which had taken place on the part of the plaintiff.

The Vice-Chancellor said, it appeared that the plaintiff had got in the answer from some of the defendants, but that instead of compelling the rest to answer, had been entering into negotiations with them, and had therefore himself been wilfully delaying the prosecution of the suit. Under such circumstances, he was of opinion that the motion ought to be granted and the bill dismissed, unless the plaintiff would undertake to proceed within three weeks.

**Vice-Chancellor Knight Bruce.**

*Re Pongerardo.* June 25th, 1847.

GUARDIAN.—INFANT.—PETITION.—SIR E. SUGDEN'S ACT, 1 W. 4, C. 65, s. 32.

A petition under Sir E. Sugden's Act, (1 W. 4, c. 65,) for payment of dividends belonging to an infant, ought to be the petition of the guardian solely, and confined to the object of payment merely. The bank having refused to obey an order granted upon a petition seeking payment, and also, the appointment of a proposed guardian, the court thought the objection valid.

A PETITION had been presented in this case in the name of the proposed guardian and of the infant, seeking a reference to the Master to approve of such guardian, and also, an order upon the Bank of England to pay the dividends to such guardian when appointed. It was thought to be doubtful whether such a petition embracing both objects could be regular under Sir E. Sugden's Act, which seemed to confine the jurisdiction of the court to a petition presented solely by the guardian. The court, however, intimated that the petition did not appear objectionable, provided the bank did not refuse to act upon it, but recommended the parties to take the order in another form.

Mr. Daniel now appeared upon the petition of the guardian, seeking an order upon the bank for paying the dividends, and he stated that the bank declined acting under the former order.

His Honour said, he thought the objection was good, and granted the prayer of the present petition.

**Queen's Bench.**

(Before the Four Judges.)

*Bownes v. Marsh.* Trinity Term, 1847.

DEBT.—INDEMNITY BOND.—BASTARD.

To an action of debt on a bastardy bond of indemnity, the defendant pleaded that the

\* Section 32, enacts, "That it shall be lawful for the Court of Chancery, by an order to be made on the petition of the guardian of any infant, in whose name any stock shall be standing, or any sum of money, by virtue of any act for paying off any stock, and who shall be beneficially entitled thereto, or if there shall be no guardian, by an order to be made in any cause depending in the said court, to direct all or any part of the dividends due, or to become due, in respect of such stocks, or any such sum of money, to be paid to any guardian of such infant, or to any other person, according to the discretion of such court, for the maintenance and education, or otherwise for the benefit of such infant, such guardian, or other person, to whom such payment shall be directed to be made being named in the order directing such payment; and the receipt of such guardian or other person for such dividends or sum of money, or any part thereof, shall be as effectual as if such infant had attained the age of 21 years, and had signed and given the same."

child was above the age of nineteen; that the defendant was willing and able to maintain the child; that when requested the plaintiffs refused to deliver the child into the care and custody of the defendant; and that the plaintiffs were damaged by their own voluntary act. Replication traversing the request of the defendant. Verdict for the defendant.

Held, on motion to enter judgment non obstante veredicto, that the facts disclosed in the plea afforded a good defence to the action, and showed that the expense sought to be recovered was incurred by the voluntary act of the plaintiff.

THIS was an action of debt on a bastardy bond, dated the 28th February, 1825, given by the defendant to the plaintiffs, the churchwardens and overseers of the parish of Mansfield, to indemnify them from all incumbrances, costs, damages, and expenses whatsoever, by reason of the birth, education, and maintenance of a bastard child, and from all actions, suits, &c., touching or concerning the same, until such child should have obtained a settlement out of the said parish of Mansfield. The declaration, after setting out these facts, went on to allege that the defendant did not indemnify the parish, but suffered and permitted the said child to be maintained and provided for at the expense of the inhabitants of the said parish. The defendant, in his third plea, alleged, that after the making of the said writing obligatory, and before the commencement of the action, the said child was above the age of nineteen; that she has been and is under the power and control of the churchwardens and overseers of the parish; that the defendant was and is ready and willing and able to maintain and provide for the child; and that the plaintiffs, after being requested by the defendant, have refused to deliver over the child to the defendant; and that the plaintiffs are damaged by their own voluntary act. The replication to this plea merely denied the request of the defendant to have the child delivered over to him. The jury found a verdict for the defendant on the third plea. A rule was afterwards obtained for judgment on that plea, *obstante veredicto*, on the ground that the putative father was not entitled to the custody of a bastard child; secondly, that the plea does not allege that the child was willing to be placed under the care of the defendant; and thirdly, that no notice of the defendant's ability to maintain the child had been given to the parish officers.

Mr. Hayes showed cause, and contended that the right of the putative father must prevail as against strangers, and that the point about the consent of the child did not arise, as the child in the plea was stated to be under the power and control of the parish officers. He cited *Haines v. Jeffell*,<sup>a</sup> *Simpson v. Johnson*,<sup>b</sup> *Hays v. Bryant*,<sup>c</sup> *Richards v. Hodges*,<sup>d</sup> *Rex v. Corn-*

forth,<sup>c</sup> *Strangeways v. Robinson*,<sup>f</sup> *Pope v. Sale*,<sup>g</sup> *Sherman's case*.<sup>h</sup>

Mr. Macaulay, *contra*. The parentage between the father and a bastard child is not recognised by the law: Co. Litt. 123 a. The child is capable of exercising a choice, and it should be shown in the plea that she was willing to go to her father. The allegation in the plea, that the child was in the power and control of the plaintiff, does not imply imprisonment. *In re Lloyd*.<sup>i</sup>

*Cur. ad. vult.*

Lord Denman, C. J., delivered the judgment of the court. After stating the facts of the case and the pleadings, he said, the jury found that the defendant was able and willing to maintain the child, and that the plaintiffs refused to deliver her to him. But the plaintiffs moved to enter a judgment for them, notwithstanding the verdict, as they contended that the facts as stated in the plea did not constitute an answer to the action, for that it was not shown that the child was willing to go and live with the defendant. We think the objection ought not to prevail, for the plea states that the child was under the control of the plaintiffs, and that they refused to deliver to her the defendant. If she was willing, the facts set forth in the plea show that the plaintiffs did not permit and suffer her to go to the defendant, and that their retention of her was contrary to his express desire. He has, therefore, alleged sufficient to show that it was by the act of the plaintiffs themselves that this expense now sought to be recovered from him was incurred.

Rule discharged.

### Exchequer.

*Eager v. Grimwood*. Trinity Term, 1st June, 1847.

SEDUCTION.—LOSS OF SERVICE.—MASTER.—SERVANT.

*An action for seduction will not lie, unless some loss of service or other injury has resulted from the seduction. Therefore, where a parent brought an action for the seduction of his daughter then in his service, and it appeared that the defendant had seduced her, and that she was delivered of a child, but the jury found that the child was not the defendant's: Held, that the jury were rightly directed to find a verdict for the defendant.*

THIS was an action for seduction. The declaration stated, in the usual form, that the defendant with force and arms, &c., assaulted and debauched the daughter and servant of the plaintiff, by means whereof he was deprived of her services. The defendant pleaded not guilty.

At the trial, before the Lord Chief Baron, it was proved that the defendant had had connexion with the plaintiff's daughter, and that she was delivered of a child, but it was contended on the part of the defendant that he was

not the father of the child. The learned judge told the jury, that if they were of opinion that the defendant was not the father of the child, then there was no evidence of any loss of service resulting from the defendant's connexion with the plaintiff's daughter, and that they ought to find a verdict for the defendant. The jury having found a verdict for the defendant, a rule nisi was obtained for a new trial on the ground of misdirection, against which

*Humfrey* showed cause. Criminal knowledge is not sufficient to found an action for seduction, unless attended with loss of service, or some pecuniary or other injury. Where the party debauched is in the service of another person, the parent cannot maintain the action, yet in that case the shame to the parent and the injury to his feelings are equally the same as if she were in his service. The action is founded on the loss of service, and unless some injury results from the criminal connexion, there is no trespass of which the parent can complain. *Grimmell v. Wells*, 8 Scott, New Rep. 741.

*Prentice* in support of the rule. It is conceded that the action cannot be maintained unless there is some loss of service, but when once the service is proved the law will presume a loss to the master in consequence of the criminal act. The declaration would have been good if it had merely stated that the defendant assaulted and debauched the plaintiff's servant; the damage here stated is either a special damage or a consequential damage necessarily arising from the act of the defendant. If in the nature of special damage, it is admitted on the record. *Torens v. Gibbons*, 5 Q. B. Rep. 297. Wherever a wrongful act is done, the law will presume some damage. [*Pollock*, C. B. Is there any authority to show that a master may maintain an action of trespass for assaulting his servant when the master has sustained no damage?] It is so laid down in *Viner's Abridgment*, title *Trespass*, 453. Wherever there is an invasion of a legal right the law will presume a damage. *Fayre v. Prentice*, 1 M. & G. 828; *Woodward v. Watton*, 2 New Rep. 476.

*Alderson*, B. It is clear that the parent cannot maintain this action where his daughter is in the service of another person, which shows that the action is founded on the loss of service. Now, if the mere fact of connexion is to be held a loss of service, it is difficult to see where it would stop. Suppose a servant took a walk, contrary to the orders of her master, would that be a loss of service? The rule must be absolute to enter a nonsuit, unless the parties agree to a *stet processus*.

*Pollock*, C. B., and *Rolfe*, B., concurred.

### THE EDITOR'S LETTER BOX.

THE extent of the matter this week, including some more of the recent Statutes, has rendered it expedient again to increase our usual space.

Correspondents will please to address their letters and communications to the Editor, at Messrs. Maxwell & Son's, 32, Bell Yard, Lincoln's Inn.

<sup>c</sup> 2 Stra. 1162.

<sup>f</sup> 4 Taunt. 498.

<sup>g</sup> 7 Bing. 477.

<sup>h</sup> 1 Ventris, 210.

<sup>i</sup> 3 Man. & Gran. 547.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, AUGUST 14, 1847.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

### REPRESENTATION OF THE PROFESSION IN THE NEW PARLIAMENT.

THE first session of the new parliament will doubtless be an important one to all classes of the community. It will be peculiarly so to the legal profession. The facts already elicited by the committee on the fees of courts of law and equity, the enormous Taxes on the administration of Justice, and the exceedingly objectionable mode in which they are levied, will call for a revival of the committee, and ultimately for the redress of that prominent grievance, both to the suitor and the practitioner. The results of the elaborate inquiry into the state of legal Education will also attract peculiar attention. The defective mode in which Legislation is conducted, especially as it regards the alterations of the law, must be considered, and some remedy at least attempted. The state of the Profession in both its branches;—the anomalies in the mode of calling to the bar, and the government of the Inns of Court;—with the complaints so justly and powerfully urged by the great body of Attorneys and Solicitors, cannot fail at an early period to demand consideration.

It may not, therefore, be inappropriate thus early to look at the result of the present general election, and to address a few words to those who have been returned to parliament, and will have the peculiar duty of considering the subjects to which we have referred.

The members of both branches of the profession already elected are in number about 43, viz.:—25 barristers re-elected,

11 *new* members of the bar, and 7 solicitors. This number includes several who are not now in practice, and a few who may be considered as only honorary members. Indeed, there are not more than twenty whose names are familiar to the echoes of Westminster Hall, although many others are sufficiently distinguished as law or political reformers. No doubt all our representatives are bound to attend to the general interests of the community, but those interests being duly provided for, the lawyer is, we think, bound to care for the welfare and improvement of the laws and of his brethren who practically carry them into effect, and without whose integrity and intelligence, vain would it be to exercise their legislative functions.

Our "learned and honourable friends" who have so far attained the object of their ambition, will be induced, we trust, to seize the earliest opportunity of considering some of the important topics affecting the best interests, not of their branch only, but of the whole profession, and with it the due and efficient administration of justice.

It has again and again been seriously urged that the successful lawyers in parliament are apt to disregard the interests of the profession. They seem to think that if they rose "in their place in parliament" and defended the honour and character of the profession, they would be unfavourably heard, and that if they vindicated the solicitors, they would commit a breach of the etiquette of the bar, which forbids an advocate from conciliating the good will of his clients! Perhaps a solitary individual might feel some delicacy on the



subject, but twenty men in the first rank of the bar surely could not lie open to any improper suspicion of fee-seeking.

The complaint, however, of parliamentary negligence comes as loudly from the general body of the bar as from the attorneys and solicitors. It is alleged that successful advocates enter the senate for the purpose of promoting their own personal aggrandizement, or that of the influential members of the bar, and that they are equally regardless of the schemes which injure the profession without benefiting the public, as of measures which might promote professional, whilst they also advanced the public, interests.

For several years past, during the progress of the numerous projects for the reform, or alteration, or amendment of the law, it would have been of great public and professional advantage, if our legal representatives in parliament had investigated individually and collectively the devices which session by session have been so recklessly introduced:—many of them would then have been rejected altogether; others remodelled and amended;—and thus the disgrace of endless acts “to amend acts” would have been avoided. The knowledge, experience, and learning of the bar ought either to take the lead in, or to control, every proposed amendment of the law. Holding the position of leading advocates in all the superior courts,—formidable even in number,—and deservedly possessed of great weight, they might have overruled all obnoxious plans, even when supported by the influence of the strongest government.

The people of this country are, above all things, attached to the right administration of justice,—to the making of wise laws, and their due execution. The power of the bar in parliament would be irresistible in the support of just, and the overthrow of pernicious, measures. But how few have ever thought, for a moment, that it was their duty to watch the fatal progress of that system of dangerous and crude legislation, which for so many years has disgraced the statute book,—by which, for the most part, the remedies in courts of justice have been rendered more difficult,—to the great perplexity and inconvenience of the practitioners, and the ultimate injury of the suitors!

The foremost men of the bar, supported by their brethren at large, and assisted by the intelligence and practical experience of solicitors, should have demanded a refer-

ence of these projected laws to men learned in the particular subjects to which they related, and capable of judging of the probable operation and consequences of the alterations proposed.

It is surely the duty, and we are persuaded that it is also the interest, of the higher branch of the profession to exert themselves for the general good of the whole. They should not wait till they are called upon, but enter at once heartily into the performance of their honourable vocation. They should not hesitate, whenever an occasion may arise, to vindicate every rank of the profession, and claim for their brethren the honourable position to which they are entitled. We hope the time has arrived when a better state of things may be expected, and that all branches of the profession will concur in removing the impediments which interrupt the course of justice, and place its professors in their true position before the public.

We shall resume and enlarge upon some of these topics, and in the meantime subjoin the list of lawyers in parliament, corrected according to the latest information. It is unnecessary to repeat the names of those who have been unfortunate in the recent contests, but hope the time may soon arrive when we may record their accession to the rolls of parliament.

1st. Members of the bar, *re-elected* for the new parliament:

Aglionby, H. A., *Cockermouth*.  
 Bernal, R., *Rochester*.  
 Buller, C., Q. C., (*Judge Advocate*), *Lis-  
keard*.  
 Cabbell, B. B., *Boston*.  
 Cardwell, E., *Liverpool*.  
 Christie, W. D., *Weymouth*.  
 Cripps, William, *Cirencester*.  
 Dundas, Sir D., S. G., *Sutherlandshire*.  
 Ewart, Wm., *Dumfries*.  
 Godson, R., Q. C., *Kidderminster*.  
 Greene, T., *Lancaster*.  
 Grey, Right Hon. Sir G., (*Home Secretary*),  
*North Northumberland*.  
 Hayter, W. G., Q. C., *Wells*.  
 Hogg, Sir J. W., Bart., *Honiton*.  
 Inglis, Sir R. H., *Oxford University*.  
 Jervis, Sir J., Knt., A. G., *Chester*.  
 Law, Hon. C. E., Q. C., *Cambridge Uni-  
versity*.  
 Lefevre, Right Hon. G. S., *Hampshire*.  
 Nicholl, Dr., *Cardiff*.  
 Romilly, John, Q. C., *Devonport*.  
 Stuart, J., Q. C., *Newark*.  
 Talfourd, T. N., Q. S., *Reading*.  
 Tancred, H. W., Q. C., *Banbury*.  
 Thesiger, Sir F., Knt., Q. C., *Abingdon*.  
 Walpole, S. H., Q. C., *Midhurst*.

2nd. *Barristers* not before in parliament, now returned :

Baines, M. T., Q. C., Northern Circuit, *Hull*.  
Brockman, E. D., Recorder of Folkstone, *Hythe*.

Cockburn, A. F., Q. C., Western Circuit, *Southampton*.

Evans, John, Q. C., *Haverfordwest*  
Headlam, T. E., Equity Bar, *Newcastle*.

Hildyard, R. C., Q. C., Northern Circuit, *Whitehaven*.

Jervis, J. J., Equity Bar, *Horsham*.

Martin, Samuel, Q. C., Northern Circuit, *Pontefract*.

Palmer, R., Equity Bar, *Plymouth*.

Turner, Geo., Q. C., Equity Bar, *Coventry*.

Whateley, W., Q. C., *South Shields*.

3rd. The *Solicitors* now practising, or who have formerly practised, and have been re-elected, are

Benbow, J., *Dudley*.

Blewitt, R. J., *Monmouth*.

Grimsditch, Thomas, *Macclesfield*.

Neeld, J., *Chippenharn*.

4th. The *Solicitors* not before in parliament, but now returned, are

Bremridge, R., *Barnstaple*.

Cobbold, John Chevalier, *Ipswich*.

Pearson, Charles, *Lumbeth*.

There are a few names to add, but which we have not yet accurately ascertained.

## ARRANGEMENT OF BUSINESS ON THE CIRCUITS.

MANY of the circuits have terminated, and those which have not concluded are drawing to a close : the amount of business on all has fallen greatly below the usual average. Two causes, at least, have combined to produce this result. The operation of the County Courts Act, by withdrawing from the superior courts of law the cognizance of a large class of cases heretofore exclusively within the jurisdiction of those tribunals, necessarily begins to be felt on circuit, as well as at the sittings in London and Middlesex.<sup>a</sup>

The pending and approaching elections too have had their influence in diminishing the number of causes set down for trial at the assizes. The election fever succeeded to the railway mania. Staid seniors and painstaking juniors bolted from the course

on which their forensic laurels were won, to start in a new field, where victory is sometimes followed by consequences more disastrous than defeat. The vacancies in the ranks of counsel, it must be admitted, might have been speedily filled up; but those to whom the laborious duty of "getting up" the evidence in circuit cases is necessarily entrusted, were also engaged in electioneering pursuits, if not as candidates, either as agents or partisans. It was felt that the preparations for an election contest, whilst they demanded undivided attention, did not admit of postponement or delay, though the trial of disputed questions of right might be allowed to stand over from the autumn to the spring without any serious injury to the interests of the parties. These considerations alone sufficiently account for the diminished proportions of the cause list in many of the counties.

It has also been suggested, that the limited period allowed for the disposal of the circuit business deterred parties from setting down their causes for trial on some of the circuits. When all the expense and anxiety of preparing for a heavy cause on circuit is considered, it cannot be matter of surprise, that those who are concerned should look with painful apprehension to the prospect that the cause may be made a remanet until the next assizes, because there has not been time to try it, or what is still worse, that it should be hastily, and as a necessary consequence, unsatisfactorily disposed of at the fag end of the assizes, when judge and counsel are alike impatient to get off to the next circuit town.

In connexion with the circuits, our attention has been directed by more than one correspondent to a matter of complaint, rather of a local nature, with reference to the Croydon Assizes. The commission day for Surrey was fixed for Saturday the 31st ultimo, and it has been the constant practice in that county, to open the commission early in the afternoon, and for the marshal's clerk to attend, and enter the causes for trial, from the time the commission is opened, on the opening day, and until the actual sitting of the court at ten o'clock the following morning. The causes are entered in the order in which the records are presented to the officer, and as the facilities of railway intercourse has made the Croydon assizes in effect a continuance of the London sittings, and there are always a considerable number of causes to be entered at that

<sup>a</sup> It appears, by a return lately made, under an order from the House of Commons, that in the interval between the 15th March, (when the new courts opened,) and the 18th June, 3,375 summonses were issued, and 1,582 causes heard, in the Liverpool district; and 2,746 summonses issued, and 1,189 cases heard, in the Manchester district.

town, there is generally a lively competition to see who can succeed in entering his cause first, so as to secure an early trial and prevent the expense and annoyance created by bringing down witnesses from London for several successive days. On the occasion referred to, the officer did not attend at Croydon to enter the causes until seven o'clock in the evening; there were no less than 115 causes to be entered, and as many professional men and others had been waiting for several hours the arrival of the expected functionary, it cannot be wondered at if some degree of clamorous impatience was manifested. The officer continued to enter the causes up to ten o'clock on Saturday night, and some who were not disposed to stay until that hour, returned to London, calculating that an opportunity would be afforded for entering their causes at any time before ten o'clock on Monday morning. It appeared, however, that Baron *Parke* unexpectedly thought fit to sit at nine o'clock instead of ten on the Monday morning, and the attorneys who were not fortunate enough to enter their causes before that hour had to return to London disappointed, with the prospect of having to pay the costs of the day for not proceeding to trial at those assizes.

Any deviation from the ordinary practice on such occasions, unless it has been preceded by the amplest notice extensively circulated, is almost sure to produce inconvenience, and ought to be avoided. If any change is to take place in the usual course, the arrangement we should suggest, to take effect hereafter, would be, to enter the causes in London, where the records are passed, instead of obliging professional men or their clerks to travel to Croydon and back, merely to do what might be as well and more conveniently done at the marshal's office in town. The causes might then be entered in the order in which parties were prepared, without any unseemly struggle for priority, and with a saving of time and expense.

It is also obviously desirable, that at any assizes at which there are 115 causes, or any like number, for trial, a specified number should be fixed for trial on each day, so that the witnesses and others concerned in causes not included in the list for the day, may depart, and not be unnecessarily kept in attendance, when there is little or no chance that the particular case in respect of which their presence is required can be called on for trial. This

simple arrangement, which prevails in all the courts, as regards the *nisi prius* sittings in London and Middlesex, would save many hundred pounds, now uselessly expended, if it were adopted on the circuits, as well with respect to common jury causes, as those in which special juries are summoned. We should be glad to find the judges, who are invested with ample authority, and have the best opportunity of informing themselves as to details, originating improvements of this nature, which involve no questionable principle.

#### TIME FOR SIGNING JUDGMENT AFTER A CERTIFICATE OR AWARD BY AN ARBITRATOR.

THE Court of Exchequer, according to a case lately reported, has established a rule of practice with respect to awards, somewhat at variance with the understanding which previously prevailed. When a verdict was taken at *nisi prius* or on circuit, subject to the award or certificate of an arbitrator, and the arbitrator made his certificate or published his award during the vacation, it was generally supposed that the party in whose favour the arbitrator had decided was not at liberty to sign judgment until after the first four days of the next term, during which period the party considering himself aggrieved by the decision might impeach the validity of the instrument by which the arbitrator declared his determination. This view of the practice, however, does not appear to be well founded.

The case referred to came on for trial at the Summer Assizes, when a verdict was taken by consent for the plaintiff, subject to the award or certificate of an arbitrator.<sup>b</sup> The arbitrator did not make his certificate until the 29th March following, and the plaintiff obtained the *postea* upon the production of such certificate, and signed final judgment on the 7th April. The question was, whether the judgment was signed prematurely, or whether the defendant was entitled to the first four days of term to question the validity of the certificate.

On the part of the plaintiff, it was admitted that there was no case directly in point, but the general rule being, that final judgment may be signed at any time after four days from the return of the *distringas*,<sup>c</sup>

and the *distringas* being returnable in Michaelmas Term, it was submitted that the verdict directed by the certificate was to be considered for all purposes as the verdict of the jury, and as if delivered in Michaelmas Term. On the other side it was contended, that the losing party should not be deprived of the four days after verdict to move to set it aside, and that the verdict could not be considered as given, until it was entered on the record pursuant to the certificate given by the arbitrator.

The court, consisting of the Chief Baron, with Barons Rolfe and Platt, (Barons Parke and Alderson being absent,) were unanimously of opinion, that the verdict was to be considered as given *at nisi prius*: it was then taken, subject to alteration; but when the alteration was made it dated back to the time it was given. In reference to the suggestion, that the party against whom the certificate was made was subjected to a disadvantage by being deprived of the four days for moving, the answer was said to be, that the parties agreed to a state of things which deprived them of that benefit; and that there was always a judge sitting at chambers, who might be applied to, if the special circumstances of the case required it. Upon these considerations, the court held, that the judgment was properly signed, and could not be disturbed.

*Cromer v. Churt*, it will be observed, was the case of a certificate, but it does not seem from the report that any different conclusion could have been come to, if it had been the case of an award instead of a certificate. In *Salter v. Yeates*,<sup>d</sup> Parke, B., said, "Where there is a certificate, it is done to save the expense of the stamp and award;" and there does not seem to be any reason why one instrument should have a different operation, or be subject to any different rules of practice from the other. Although each of the learned barons by whom *Cromer v. Churt* was determined, adverted in his judgment to the possibility of an appeal to a judge at chambers, under special circumstances, the form of such application was not suggested. In ordinary cases it may be sufficient for a judge to order a stay of proceedings, but it is not difficult to conceive cases, in which judgment may be signed and execution executed with so little delay, after the publication of an award, as to render a judge's order staying proceedings nugatory. Should the

other courts adopt the ruling of the Court of Exchequer in *Cromer v. Churt*, it will become necessary to settle the mode of procedure by which an award, manifestly objectionable, may be impeached before it is actually enforced by execution. Meanwhile, the practice, as established by the case cited, affords an additional reason for the parties hesitating before they consent to a reference under an order of *nisi prius*, when all the expenses of a trial have been incurred.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### SECURING TRUST FUNDS AND RELIEF OF TRUSTEES.

10 & 11 VICT. c. 96.<sup>e</sup>

An Act for better securing Trust Funds, and for the Relief of Trustees. [22nd July, 1847.]

1. *Trustees may pay trust monies or transfer stocks and securities into the Court of Chancery. — Receipt of bank cashier, or certificate of proper officer, to be sufficient discharge.*—Whereas it is expedient to provide means for better securing trust funds, and for relieving trustees from the responsibility of administering trust funds in cases where they are desirous of being so relieved: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That all trustees, executors, administrators, or other persons, having in their hands any monies belonging to any trust whatsoever, or the major part of them, shall be at liberty, on filing an affidavit shortly describing the instrument creating the trust, according to the best of their knowledge and belief, to pay the same, with the privity of the Accountant-General of the High Court of Chancery, into the Bank of England, to the account of such Accountant-General in the matter of the particular trust (describing the same by the names of the parties, as accurately as may be, for the purpose of distinguishing it,) in trust to attend the orders of the said court; and that all trustee or other persons having any annuities or stocks standing in their name in the books of the Governor and Company of the Bank of England, or of the East India Company, or South Sea Company, or any government or parliamentary securities standing in their names or in the names of any deceased persons of whom they shall be personal representatives, upon any trusts whatsoever, or the major part of them, shall be at

<sup>e</sup> Rules and orders are to be made by the Lord Chancellor, &c. for carrying this act into effect. See sect. 4. Until such orders are made, we presume no proceedings can be taken.

liberty to transfer or deposit such stocks or securities into or in the name of the said Accountant-General, with his privity, in the matter of the particular trust, (describing the same as aforesaid,) in trust to attend the orders of the said court; and in every such case the receipt of one of the cashiers of the said bank for the money so paid, or, in the case of stocks or securities, the certificate of the proper officer, of the transfer or deposit of such stocks or securities, shall be a sufficient discharge to such trustees or other persons for the money so paid, or the stocks or securities so transferred or deposited.

2. *Court of Chancery to make orders on petition, without bill, for application of trust monies and administration of trust.*—That such orders as shall seem fit shall be from time to time made by the High Court of Chancery in respect of the trust monies, stocks, or securities so paid in, transferred, and deposited as aforesaid, and for the investment and payment of any such monies, or of any dividends or interest on any such stocks or securities, and for the transfer and delivery out of any such stocks and securities, and for the administration of any such trusts generally, upon a petition to be presented in a summary way to the Lord Chancellor or the Master of the Rolls, without bill, by such party or parties, as to the court shall appear to be competent and necessary in that behalf, and service of such petition shall be made upon such person or persons as the court shall see fit and direct; and every order made upon any such petition shall have the same authority and effect, and shall be enforced and subject to rehearing and appeal, in the same manner as if the same had been made in a suit regularly instituted in the court; and if it shall appear that any such trust funds cannot be safely distributed without the institution of one or more suit or suits, the Lord Chancellor or Master of the Rolls may direct any such suit or suits to be instituted.

3. *Regulating salary of Accountant-General.*—That the additional remuneration which the said Accountant-General may receive in consequence of the operation of this act shall not have the effect of giving to him any claim for a larger income by way of salary or otherwise, in the event of the said office of Accountant-General being hereafter regulated by competent authority, than would have been assigned to him if this act had not been passed.

4. *Lord Chancellor, with Master of the Rolls, &c., may make general orders.*—That the Lord Chancellor, with the assistance of the Master of the Rolls, or of one of the Vice-Chancellors, shall have power, and is hereby authorised, to make such orders as from time to time shall seem necessary for better carrying the provisions of this act into effect.

5. *Construction of expression "Lord Chancellor."*—That in the construction of this act the expression "the Lord Chancellor" shall mean and include the Lord Chancellor, Lord Keeper, and Lords Commissioners for the custody of the Great Seal of Great Britain for the time being.

## TITHES AMENDMENT.

10 &amp; 11 VICT. c. 104.

An Act to explain the Acts for the Commutation of Tithes in England and Wales, and to continue the Officers appointed under the said Acts until the First Day of October, One thousand eight hundred and fifty, and to the End of the then next Session of Parliament. [22nd July, 1847.]

1. 6 & 7 W. 4, c. 71.—5 Vict. c. 7.—5 & 6 Vict. c. 54.—*So much of recited acts as limits the duration of tithe commission repealed.*—Powers of commissioners, &c., to continue in force till October 1, 1850, unless sooner determined.—Whereas by an act passed in the seventh year of the reign of his late Majesty, intituled "An Act for the Commutation of Tithes in England and Wales," tithe commissioners for England and Wales were appointed, and by the said act, and by sundry acts since passed for the amendment thereof, and for continuance of the said commission, the powers of the said commissioners now stand limited, and will expire at the end of the session of parliament next after the 31st day of July, in this year 1847; and it is expedient that the same be further continued: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That so much of any of the recited acts as limits the time during which any tithe commissioner, assistant commissioner, secretary, or assistant secretary, or other officer or person appointed or to be appointed under the first-recited act, shall hold his office to the said 31st day of July, shall be repealed; and that the commissioners and assistant commissioners, secretary, assistant secretary, and other officers and persons appointed or to be appointed under the first-recited act, may continue to hold their several offices, if not sooner removed by lawful authority, until the first day of October, in the year 1850, and until the end of the then next session of parliament; and that all the powers of the said commissioners, and their assistant commissioners, secretary, assistant secretary, officers and servants for the time being, shall continue in force, according to the provisions of the said several acts as amended by this act, until the said first day of October, and the end of the then next session of parliament, unless her Majesty shall be pleased sooner to determine the said commission.

2. *Confirmed apportionments to stand good.*—And whereas by the first-recited act it was enacted, for the quieting of titles, that no confirmed agreement, award, or apportionment shall be impeached after the confirmation thereof by reason of any mistake or informality therein, or in any proceeding relating thereunto, and doubts have been entertained as to the full meaning and extent of such enactment; be it declared and enacted, That, notwithstanding any exception in the said act contained

every instrument purporting to be an instrument of apportionment, confirmed under the hands and seal of the said tithe commissioners, shall be hereby absolutely confirmed and made valid, both at law and in equity, in all respects, subject, nevertheless, to the powers given to the tithe commissioners in the first-recited act, or in any act passed for the amendment thereof, for alteration of any instrument of apportionment.

3. *Instruments of apportionment may be corrected if any lands shall have been improperly included or charged with rent-charge therein.*—9 & 10 Vict. c. 73.—That if it shall be shown to the satisfaction of the said tithe commissioners that any lands have been improperly included or improperly charged with rent-charge in any confirmed instrument of apportionment, it shall be lawful for the said tithe commissioners to correct such apportionment, and the deposited copies thereof, either by excluding such lands so improperly charged from the apportionment, and re-distributing any rent-charge imposed upon such lands on lands legally liable to the payment thereof, or by sanctioning the redemption of the rent-charge so improperly charged by the persons capable of redeeming the same under the provisions of an act of the last session of parliament, intituled "An Act further to amend the Acts for the Commutation of Tithes in England and Wales;" and all costs and expenses attendant upon the correction of any confirmed instrument of apportionment shall be borne and paid by such persons and in such proportions as the said tithe commissioners shall direct, and shall be recoverable from the person or persons declared liable by the said tithe commissioners to the payment of the same in such manner as expenses attendant upon original instruments of apportionment are recoverable.

4. *Instruments to be delivered up for the purpose of such correction.*—That for the purposes of such correction or of recording any such redemption the person or persons having the custody of any copy of any instrument of apportionment shall be bound, upon the application of the tithe commissioners, to deliver to the said tithe commissioners any copy of a confirmed instrument of apportionment which shall have been deposited with them respectively.

## NOTICES OF NEW BOOKS.

*The Practice of the Ecclesiastical Courts, with Forms and Tables of Costs.* By HENRY CHARLES COOTE, Proctor in Doctor's Commons, and one of the Examiners to the Judicial Committee of her Majesty's most Honourable Privy Council and the Arches and Prerogative Courts of Canterbury. London: Henry Butterworth. 1847. Pp. 966.

WHILST the law as administered in the

ecclesiastical courts is made known to the profession at large through the medium of various treatises and reports of cases decided, the *practice* in those tribunals has hitherto been "a sealed book." The principles of law have been well expounded by the learned advocates of Doctors' Commons, but, with one exception,<sup>a</sup> they appear to have deemed the subject of procedure in the courts as beneath their notice. Doubtless, the course of proceeding,—the forms and details of practice,—are well known to that respectable and limited body the proctors of Doctors' Commons. Standing in the same relation to the suitors in the ecclesiastical courts as the attorneys and solicitors do to the courts of common law and equity, they are the depositories of the rules by which the court is ordinarily governed, and which experience has prescribed either as convenient or advantageous to the officers and practitioners, or tending to save the time of the court, or to diminish the topics of controversy.

In the courts of law and equity, from the complication of matters of practice and the multitude of practitioners,—more or less versed in the technicalities which arise out of the vast variety of legal procedure,—books of practice exist in comparatively large numbers for the guidance of all who seek the *officina justicie*. A succession of able writers have appeared in this department of legal lore. In the last age, in the common law courts, there were Impey, Tidd, and the elder Chitty: in the present, Archbold and Chitty, jun., and latterly Bagley and Lush. In equity, Turner and Venables were formerly the principal authorities, now succeeded by Daniel, Sidney Smith, and many others.

The practitioner in the ecclesiastical courts appears to have depended on his personal knowledge, or his ready access to the officers of a court, (like the late six clerks' office in Chancery,) and probably on the good understanding which is easily kept up amongst a small body of men, all practising in the same locality. Now, however, not only the tyro in Doctors' Commons, but the solicitors who necessarily resort to the agency of proctors, are made acquainted with the practice and course of proceeding, which hitherto has been of a traditionary nature, or confined

<sup>a</sup> See the sections on Practice in Dr. R. Phillimore's edition of Burn's Ecclesiastical Law.

to the offices in which the business is transacted.

In the composition of a work on the practice of these courts we should have preferred that the task had fallen into the hands of one of the older practitioners ; but as it has not suited the leisure or convenience of any of them to encounter the labour, we are glad that it has been undertaken by Mr. Coote, one of the junior proctors ; and we shall proceed to advert to the scope of his work,—in the Preface to which, it is stated, that

“The principles which regulate the judicial practice of the Ecclesiastical Courts have, in their older form, been illustrated by Clerke, Conset, and Oughton ; the latter of whom has also annexed to his work some formular precedents, which have long since, however, become obsolete and impracticable.

“With this solitary exception, (if, indeed, it be such,) there is not, as far as I am aware, any publication either of early or recent date, which has been conceived upon the plan of the present compilation, and it was the consideration of this deficiency which prompted me to make the first step toward supplying it by a selection of such modern and approved precedents as would embody and elucidate the general principles of ecclesiastical practice.

“The peculiarity, therefore, which I claim for the following pages will, I trust, assist to excuse the faults which will be found in them, and suggest to the candid reader, who is not ignorant of the difficulties which attend the adoption of a new method, an indulgence for any imperfection of information, or crudeness of remark, which the scrutiny of a critic may detect.

“In making the assertion, however, that the method which I have pursued forms the peculiarity of these pages, I mean only to express that no complete or general compilation on this subject has yet been submitted to the judgment of the public.

“In the lucid and excellent sections on *Practice* which have appeared in the new edition of Burn's ‘Treatise on the Ecclesiastical Law,’ by Dr. Robert Phillimore, the same plan has been followed ; though, owing to the range of the work being too wide to allow the amplification of any single department, they are necessarily on a small and limited scale. If the learned and talented Editor had extended his plan so as to embrace all the phases of practice discernible in the Ecclesiastical Courts, there would have been no necessity for the present compilation, and I should have unhesitatingly suppressed the materials which I had collected for it.”

There is a very ample introduction, occupying upwards of a hundred pages, in which the author treats very learnedly and historically of the jurisdiction of the courts ;

and from this part of his work we extract the following passages as illustrative of his style and manner :—

“The establishment of these courts was in this country of considerable later date than in almost any other state of Europe. On the continent they had been in active operation ever since the reign of the Emperor Theodosius, the younger, to whom must be ascribed their first legalization. But even before that age the separation of the Christian body from the nation at large, which still adhered to paganism in almost all material points, both in practice and opinion, had occasioned many peculiar questions in which their faith might be in some degree compromised or implicated, to be treated upon and determined by their own assembly under the supervision of the higher priesthood, and without the intervention of the ordinary civil tribunals of the state. This, we have every reason to regard as the first germ of the Ecclesiastical Jurisdiction, an authority peculiar to, and perhaps co-existent with, Christianity itself, and to which it is impossible to find an exemplar or analogy in any pagan state of antiquity.

“Whilst in England these courts, as we shall afterwards see, owe their ostensible birth to a sudden and fortuitous introduction of foreign usages and principles of law ; on the continent, they had been the gradual and spontaneous product of opinions deducible from and connected with the dogmas and traditional practices of the Christian Religion itself. The church, as a governing power, possessed, simultaneously with the authority of inflicting a private penance for the more secret offences of a minor grade, a corresponding jurisdiction to impose a public admonition and censure on offenders of a glaring and scandalous character ; and to the exercise of the latter of these powers we owe the criminal processes of the church *pro salute animæ*, or for the reformation of moral excesses. In the same manner, the circumstance of marriage being regarded in the light of a sacrament or sacramental rite, necessarily placed it, together with all circumstances connected therewith, entirely under the control of the church.

“This jurisdiction being, therefore, native and inherent, received at the hands of Theodosius no more than a general confirmation and support. But from the simple text of the *Codex Theodosianus*, by which the bishops are pronounced to be the proper judges in all cases, ‘*quoties de religione agitur*,’ the Ecclesiastical Jurisdiction received a liberal amplification in succeeding ages, through the voluntary concessions of the civil government ; for the church subsequently acquired a complete power of adjudication, not only over the conduct of clerks, its own revenues, and marriages, but also over the accessory questions of dower and alimony, the breach of faith in sworn compacts or promises, the validity or invalidity of last wills, the enforcement of legacies, and the administration of a deceased person's property.



"This was the condition of the continental Ecclesiastical Courts at the epoch of the accession of the Norman conqueror to the throne of England; and they had already excited the jealousy and awakened the late repentance of the secular authorities, with whose jurisdiction they on many occasions clashed and were successfully competed. In the words of a great French antiquary<sup>b</sup> describing their state at the time—'Curia Christianitatis amplissima fuit jurisdictio, cum questionum et causarum omnium quæ non modo res ecclesiæ sed et sacramenta, et quidquid ex eis dubietatis oriretur, spectant, cognitionem sibi arrogasset.'

"Nothing of this kind was to be seen in England, at the time of the Norman conquest. The Anglo-Saxon common law never recognised the principle of a separate civil or criminal jurisdiction, as exercised by the church, though, either out of respect to the sacred character of its members or from a sense of their superior learning and intelligence, it had certainly admitted the Episcopal order to a participation in the municipal judicature of the country. For ever since the introduction of Christianity into England, the bishops had sat to hear causes in the county court, in conjunction with the ealdorman or his sheriff."

The divisions of Ecclesiastical Jurisdiction are thus stated :—

"As regards the scheme of Ecclesiastical Jurisdiction, England is separated into the two provinces of the Archbishops of Canterbury and York, and these again, for the purposes of immediate control, are subdivided into the dioceses of the respective bishops of the Established Church. In addition to the latter, there are also the jurisdictions of the deans and chapters of the cathedral churches, and of the archdeacons, besides the peculiars, which admit of no regular classification. The matter of the Ecclesiastical Jurisdiction, which is the subject of this compilation, belongs, in all its branches, in the first instance, to the consistorial courts of the archbishops and bishops. The Prerogative Court of the Archbishop of Canterbury is confined to the testamentary questions of the province, and the Arches' Court of Canterbury is only appellate.

"The courts of the deans and chapters have exclusive jurisdiction over matrimonial suits arising within their precinct, but now interfere with little else.

"From the Arches and Prerogative Courts of Canterbury, as also from the corresponding courts of the province of York, the appeal lies to her Majesty the Queen in council."

Mr. Coote then describes the proceedings in *criminal* suits against clerks, under the 3 & 4 Vict. c. 86 : 1st, by commission of inquiry ; and 2ndly, by letters of request to the Arches Court. The notices, articles, mode of proceeding, and forms are fully

stated. Next come the description of criminal suits against laymen and clerks, and the citations, articles, mode of taking evidence, sentence, &c.

In treating of *civil* suits, Mr. Coote, 1st, takes ecclesiastical causes, viz., defamation, with the citation, proxies, libel, and evidence, the sentence, penance, &c. ; 2nd, perturbation of seat in a parish church, the citation, libel, &c. ; 3rd, subtraction of church-rate ; 4th, suits to recover penalties for non-residence under 1 & 2 Vict. c. 106 ; 5th, grant of faculty.

*Matrimonial* causes are then treated of : 1st, divorce for adultery, including alimony, *pendente lite* ; 2nd, divorce for cruelty ; 3rd, jactitation of marriage ; 4th, restitution of conjugal rights ; 5th, nullity of marriage by reason of impotence ; 6th, nullity by reason of former marriage ; 7th, nullity by reason of insanity or imbecility ; 8th, nullity of marriage under 4 Geo. 4, c. 76.

Mr. Coote next treats of *Testamentary* causes :—1st, the course of proceeding therein ; 2nd, subtraction of legacy ; 3rd, interest causes ; 4th, inventory and account ; 5th, distribution of intestate's personal estate ; 6th, suit to permit a bond to be sued on ; 7th, citation to accept or refuse probate or letters of administration.

The *general practice* is then stated, comprising letters of request and service, forms of answers, mode of compelling the attendance of witnesses, forms of interrogatories and taking evidence, commissions to examine witnesses, publication of depositions, &c.

The compulsory execution of sentences and proceedings in contempt are next set forth ; and lastly the author treats of *Appeals*.

## PROPOSED INVESTMENT OF TRUST MONIES WITHOUT THE AID OF COUNSEL AND SOLICITORS.

AMONGST the projects of the late session, a bill was introduced, bearing the names of Mr. Hope, Lord Courtenay, and Mr. Walpole, to facilitate the Investment of Trust Monies in the Improvement of Land. It recited that

It is expedient that further facilities should be given for the permanent improvement of land : And that there may be now or hereafter in the hands or standing to the account of the trustees of a settlement, will or codicil, monies produced by the sale or received for

<sup>b</sup> "Ducange, sub voc. Curia Christianitatis."

equality of exchange of settled landed estates under a power of sale or exchange, or under trusts for sale in such settlement, will or codicil contained, or stocks or securities purchased with such monies, and which monies are liable to be laid out in the purchase of other lands, to be settled to the same or the like uses, or upon and for the same or the like trusts and purposes as the estates from the sale or exchange of which such monies were produced, and there may be now or hereafter in the hands or standing to the account of the trustees of a settlement, will, or codicil, monies the produce of settled estates sold compulsorily or otherwise, for the purposes of a railway or other public work or undertaking, or other monies, stocks or securities liable to be laid out or employed in the purchase of lands; and it may happen that the said monies, stocks or securities respectively may be advantageously laid out or employed in the permanent improvement of lands remaining unsold or in settlement: And that there may be now or hereafter in the hands or standing to the account of trustees or guardians for infants or others under legal disability, or in the hands or standing to the account of the committees of persons of unsound mind, monies, stocks or securities, which may be advantageously laid out or employed in the permanent improvement of the lands of such infants, persons of unsound mind, or others under legal disability. It was then proposed by the bill, that trustees (with the consent of any person beneficially interested, in possession, if of full age), guardians, or committees, might apply to the Court of Chancery, by petition praying that they may be authorized to lay out and expend money in the permanent improvement of any land vested in or intrusted to them to be advanced out of any such trust monies, stocks or securities.

And that, upon the presentation of any such petition as aforesaid, it shall be lawful for the said court, *without requiring the attendance of any counsel or solicitor*, to refer it to one of the Masters of the said court to make all necessary and proper inquiries, and to consider all such evidence, estimates, and valuations as shall be produced before him in relation to the matter of such petition, and to report whether in his opinion it will be beneficial to all persons interested that the projected improvements or any part thereof should be made, and whether the sum or sums of money in the petition mentioned, or any part thereof, should be advanced.

After providing for the confirmation of the Master's report, it was then proposed to enact, That after any sum shall have been so advanced such trustees or guardians or committees may apply to the said court, for a reference to one of the Masters, to ascertain that the same have been properly expended; and upon a report being made that

such sums have been properly expended, and upon the report being duly filed according to the practice of the court, then it shall be lawful for the court, *without requiring the attendance of any counsel or solicitor*, to make an order to confirm such report; and thereupon the trustees, guardians or committees concerned, shall be for ever fully released from all liability or responsibility on account of or concerning the application of any such sums.

Although this bill was withdrawn, soon after it was introduced we consider it important to call the attention of our readers to its provisions. It concerns the public as well as the profession, and appears to be the first occasion (except an abortion one of Lord Brougham) on which an attempt has been made expressly to supersede the services of counsel and solicitors and let in the evil of unqualified practitioners, which it has hitherto been the object of the legislature to exclude. It is manifest that the persons who would put this act into operation could not do it themselves; they must employ some agent to assist them, who, under the promise of charging less than a solicitor, would lead them into difficulties and generally into greater expense.

Here is another instance of the introduction into parliament of pernicious measures just at the close of the session. In this case it was promptly stopped, but there ought to be a standing order that no law bill should be brought in later than the first week after Easter, without the special leave of both houses.

## PUBLIC RECORD BUILDINGS ON THE ROLLS' ESTATE.

THE Sixth Report of the Commissioners for the Improvement of the Metropolis has just been published, from which it appears that the government have determined to build the various depositories, rooms, and offices required for the safety of the invaluable public records of the kingdom. The plans of the building and the site of the Rolls' estate have been approved by the Master of the Rolls.

The approaches to this important building will be connected with the general improvement of the metropolis by a large central avenue from the north side of St. Paul's. The new opening from Piccadilly to Long Acre will be extended to Carey Street. That street will be widened, and a new street extended eastward to join the intended improvements in the city. These

approaches are not finally arranged, but the record building, which is the first great step in the measure, seems settled and determined.

The following is the report :—

"The Viscount Morpeth, chief commissioner of your Majesty's Woods and Forests, having, as chairman of this commission, submitted, by the request of your Majesty's Secretary of State for the Home Department, certain plans which had been prepared by Mr. Pennethorne under his direction for the building of a Record Office, and for making the necessary approaches thereto,—together with a memorandum as to the practicability and expediency of effecting these objects, in connexion with the appropriation of a portion of the Rolls' Estate in Chancery-lane,—your Majesty's commissioners have taken these plans, with the accompanying memorandum, into their consideration; and having heard evidence thereupon to the extent which the terms of their commission were deemed to justify, they now humbly beg leave to report to your Majesty the result.

"The plans laid by Viscount Morpeth before this commission were four in number; two showing the site of the proposed building and the intended approaches thereto, and proposing, in connexion with that site and those approaches, the execution of a line of street to form a main central thoroughfare between the eastern and western divisions of the metropolis; the remaining two exhibiting the general arrangement and disposition of the interior of the building, and the space proposed to be made available for its intended purposes.

"Your Majesty's commissioners were informed that plans Nos. 3 and 4 had, in reference to the points immediately above-mentioned, received the approval of Lord Langdale, the Master of the Rolls. Into the fitness, therefore, or the applicability of those plans to all the requirements of a depository for public records they did not deem it incumbent upon them to inquire minutely. Their attention was directed, in the first place, to the plans which have been devised for improving the communications in the vicinity of the proposed site; and, secondly, to the capacity and eligibility of the site itself: having reference not only to the exigencies of the present time, but to any probable demand for the enlargement of the building within the next century.

"In directing their attention to the matters falling more especially within their own province, your Majesty's commissioners examined Mr. Richard Lambert Jones, the chairman of the London Bridge Approaches' Committee; Mr. Henry Cole, one of the assistant keepers of the Records, acting, it is understood, on this occasion, with the permission of the Master of Rolls; and Mr. Pennethorne, the professional adviser of the commissioners of your Majesty's Woods upon all questions of metropolitan improvement, who had also on this occasion been proceeding in communication with Mr. Henry

Cole, who was directed by Lord Langdale to give to Mr. Pennethorne all the information in his power.

"Your Majesty's commissioners were informed by Mr. Richard Lambert Jones, that a plan for the formation of a street intended as a central communication between the eastern and western divisions of the metropolis,—that is to say, between the great leading thoroughfares of Ludgate-hill, Fleet-street, and the Strand on the south, and Snow-hill and Holborn on the north,—had been under the consideration of the London Bridge Approaches' Committee two years ago; but that improvements in progress, and contemplated in other parts of the city, had subsequently led to its suspension. The line then proposed, commencing at the western extremity of Cheapside, and extending to the site of the late Fleet-Prison, would have passed over Farringdon-street by a bridge, and would have terminated at the city boundary in Fetter-lane, with a branch extending north into Holborn, nearly opposite to Furnival's Inn. Of the line proposed by Mr. Pennethorne, (to which your Majesty's commissioners will refer hereafter,) though not identical with the line above adverted to, Mr. Richard Lambert Jones expressed a favourable opinion. He considered that the line exhibited in plan No. 2, would, if slightly altered, be at least as good as any which could be devised: and he thought it probable that, if the Commissioners of her Majesty's Woods could effect arrangements with the Corporation of London, by which the appropriation of the coal duties to purposes of metropolitan improvements could be placed upon an amended footing, the authorities of the city would, out of any funds which might then be placed at their disposal, at once undertake to form the portion within their own boundary. Mr. R. L. Jones further stated it to be his opinion, that whatever difficulties might impede the completion of the whole plan No. 2, including the entire communication east and west of Fetter-lane, the execution of the more limited plan No. 1, as proposed by Mr. Pennethorne, comprehending the space between Fetter-lane and Chancery-lane, would of itself effect a great improvement.

"From the evidence of Mr. Henry Cole, your Majesty's commissioners were enabled to inform themselves respecting the several buildings in which the public records are at present deposited. No one of these buildings, according to the evidence adduced before this commission, appears to have any special aptitude for the purposes to which it is applied; and in some instances it may be stated that they are decidedly unfitted to those purposes. Partly from want of space, and partly from apprehension of fire, the reception of the more modern and current class of records is understood to have been suspended; and from these and other causes, the expense of lodging, maintaining, and protecting the records which are in charge, is stated to be from 1,500*l.* to 2,000*l.* per annum.

"Your Majesty's commissioners are in-

formed by Mr. Henry Cole, that the plans of Mr. Pennethorne having reference more immediately to the accommodation of those records, have been prepared in communication with the Master of the Rolls, from measurements furnished by Mr. Henry Cole himself, and in great measure under his own immediate supervision:—that he considers them to present the best means of providing for the pressing exigencies of the present period, looking to the difficulty which the crowded state of the metropolis must interpose to the accomplishment of any plan upon a fitting scale and of more extensive dimensions:—and that the Master of the Rolls had very carefully inspected these plans, had suggested alterations while they were in progress, and, he had every reason to believe, had at length signified his approval.

“Your Majesty’s commissioners believe that they are justified in inferring from the same evidence, that in the selection of a site for the proposed building, the Master of the Rolls is of opinion, that preference should be given to the immediate neighbourhood of the Inns of Court, and as far as possible, both on grounds of convenience and of economy, to the appropriation of the Roll’s Estate, or some portion of it, to that purpose.

“From the evidence of Mr. Henry Cole, your Majesty’s Commissioners were informed that the space which the records now in charge would occupy in any building provided for that purpose, would be 160,000 cubic feet; that if the Welch and other records not at present actually in charge were added to that collection, these requirements would be increased to 225,000 cubic feet; and that, looking at the probably increased deposits within the next century, there would be a further addition of not less than 200,000 cubic feet required within that period, making a total of 425,000 cubic feet for the deposit of records alone. The requirements for access and ventilation, however, it is represented to your Majesty’s commissioners, would considerably exceed that amount. It would involve, in Mr. Henry Cole’s opinion, the appropriation of a space amounting to about 3,000,000 cubic feet for all purposes. Assuming that such extent of space could be provided, Mr. Henry Cole is of opinion, looking to portions of the estate which would still be unappropriated, that the probable exigencies of the next 100 years would be amply met by the proposed arrangements.

“Mr. Pennethorne produced before your Majesty’s commissioners a plan which he informed them had been prepared in the year 1834,—had been submitted by him to a committee of the House of Commons, and in part appended to their report in 1838,—and had, in certain portions, and to a limited extent, been already executed. Proceeding eastwards from Long Acre, the line of thoroughfare then proposed by Mr. Pennethorne would have passed along the south side of Lincoln’s-inn Fields; across New-square and Fetter-lane; over Farringdon-street by a bridge; thence to the west-

end of Newgate-street; and, widening the north side of that street, would have terminated in Cheapside. The plan which has been submitted for the especial consideration of your Majesty’s commissioners, differs from the former plan in some essential particulars:—it diverges southwards from Long Acre into Carey-street, Lincoln’s-inn; traverses the north side of the Rolls Estate into Fetter lane; and proceeds thence (in a line nearly identical with one proposed by Mr. Bunning, the City Surveyor) by a bridge over Farringdon-street; passing by the Sessions House Old Bailey, and Newgate Market, to the west-end of Cheapside.

“Your Majesty’s commissioners are informed, that the division southwards of the line of street from Lincoln’s-inn Fields and New-square, Lincoln’s-inn, has been proposed by Mr. Pennethorne, in consequence of communications with the Benchers of Lincoln’s-inn and with the trustees of Lincoln’s-inn Fields, held two years ago in reference to plans framed for other purposes, and not proceeded with in consequence of the opposition which would have arisen in parliament, if any portion of that locality had been affected.

“Your Majesty’s commissioners are also informed, that a further object of Mr. Pennethorne, in diverting that portion of the line extending from Carey-street to Fetter-lane, was to render available for the purposes of the Record Office the largest possible portion of the Roll’s Estate; and, at the same time, in conformity with the recommendation of Mr. Braidwood, and the requirements of the Master of the Rolls, to provide, in the isolation of that building, an additional means of security against fire.

“The portion east of Fetter-lane is represented by Mr. Pennethorne as being a slight modification of that proposed by Mr. Bunning, so as to unite Mr. Bunning’s general line with his own.

“Mr. Pennethorne is of opinion, that the line now submitted to your Majesty’s commissioners, in plan No. 2, would, as a thoroughfare, compared with the line proposed to the Select Committee of 1838 on Metropolitan Improvements, afford an equally advantageous channel for the general traffic of the town; while it would be more effective in relieving the present excessively crowded traffic of the Strand, and would present more convenient means of communication between the Record Office and the Courts of Law, in the event of those courts being ever erected in the same locality.

“Your Majesty’s commissioners, as they have already intimated, did not feel it incumbent upon them to examine Mr. Pennethorne, as to the details of plans Nos. 3 and 4. Incidentally, however, in reference to the question of a subsequent extension of the building, they think it right to notice, that the walls, according to his plans, would be built of sufficient thickness to carry another story, whenever required; and that the building might, at a future time, be extended over the site of the

judges' chambers, and seven houses on the Rolls' Estate, fronting Chancery-lane.

"The plan No. 2, may be divided into three portions, viz., the portion west of Carey-street;—the portion more immediately connected with the proposed Record Office, extending from Carey-street to Fetter-lane;—and the portion east of Fetter-lane, the whole of which last is within the limits of the city.

"The centre portion of this plan, and that to which alone your Majesty's commissioners think it necessary at present to direct their attention, is shown more at large on the plan numbered 1 in the Appendix; and Mr. Pennethorne is to be understood as having hitherto confined his estimates to this portion.

"The object of the plan No. 1, is to distinguish by colours the Rolls Estate from other property in the immediate vicinity; and to exhibit the requirements of the proposed Record Office in respect to site,—whether by occupation of parts of the Rolls Estate, or by acquisitions of other property, and for the formation of streets around the building.

"The net ultimate cost of purchasing these properties, of forming the streets in the immediate locality, and of erecting and fitting up the proposed Record Office, according to these plans, would be—

For the cost of the building	£175,000	
" of the fittings	31,500	
		206,500
For purchases	£293,500	
Deduct probable return from }	50,000	
ground-rents . . . }		243,500
Total net cost	£450,000	

"In the memorandum referred to this Commission, with the plans, Mr. Pennethorne observes, that the cost of the purchases may be apportioned thus:—

For the Record Office	£130,107
For the improvement of the thorough-fares	112,908
	£243,015

The gross sum being nearly in accordance with that stated in his evidence before this commission.

"Your Majesty's commissioners are not apprized of the funds out of which it would be proposed to defray any portion of this expenditure; nor are the evils to the remedy of which those funds would be more immediately applied, a fitting subject for comment on the part of this commission. On the other hand, the necessity for providing vent for the overcrowded traffic of the central portions of the metropolis, by the formation of new thorough-fares in a direction east and west of Temple Bar, has been so frequently urged in evidence before Select Committees of Parliament, that your Majesty's commissioners have not felt it requisite to hear further evidence on this point on the present occasion. They think it necessary, indeed, at the present moment, to direct

the attention of your Majesty's Government to the central portion only of that plan,—that portion, for the execution of which the acquirement of property would become necessary in reference to any immediate proceeding connected with the erection of a new Record Office; and, looking to the testimony of Mr. Richard Lambert Jones in favour of executing such portion, even in the event of the more extended line not being adopted;—looking to the approval by the Master of the Rolls of the particular site proposed for the Record Office, and of the approaches thereto;—and looking to the evidence of Mr. Pennethorne, showing the advantages which would accrue to the public from connecting these important objects with each other,—your Majesty's commissioners are of opinion that, if measures be adopted by the Government for the erection of such a building, such portion of Mr. Pennethorne's proposed lines of streets as are comprised in plan No. 1, should be at the same time executed. Your Majesty's commissioners think it their duty, however, at the same time to add, that the line of communication proposed by plan No. 2, is (irrespective of the special advantages of erecting an office for the records of the kingdom on the site suggested) the most eligible and the most practicable line for connecting the eastern and western portions of the metropolis, and that it would very advantageously increase the facilities of communication within the same.

"Your Majesty's commissioners have the satisfaction of adding that, having submitted the preceding pages of this report to the Master of the Rolls, his Lordship has signified his approval both of the plans for the Record Office, and of the site proposed for the building.

(L. S.) MORPETH.  
(L. S.) LITTLETON.  
(L. S.) COLBORNE.  
(L. S.) JOHN CHARLES HERRIES.  
(L. S.) JOHN HUMPHERY.  
(L. S.) GEORGE CARROLL.  
(L. S.) ROBERT HARRY INGLIS.  
(L. S.) CHARLES LEMON.  
(L. S.) HENRY THOMAS HOPE.  
(L. S.) ALEXANDER MILNE.  
(L. S.) CHARLES GORE.

Office of Woods, &c., 15th July, 1847.

## CONSTRUCTION OF THE BANKRUPTCY AND INSOLVENCY ACTS.

ORDER OF PROTECTION.—PLEA IN BAR.—COMMISSIONERS' JURISDICTION.

*Jones v. Pontifex.*

THE defendant in this suit presented his petition to the Court of Bankruptcy, which was duly filed, and in the schedule to such petition, the defendant included the name of the plaintiff, and the amount for which this action was brought, viz., 30*l.* 3*s.* 2*d.* On the 23rd of April, 1845, the defendant obtained his final

order for protection from process under 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96. In the petition was contained a proposal that the defendant should pay into the hands of the official assignee the sum of 2l. monthly, for the gradual liquidation of his debts. The defendant failed in keeping up the instalments pursuant to such proposal. The plaintiff was appointed the trade assignee. On the 12th Jan. 1846, the plaintiff (a butcher) brought his action to recover the amount of his debt, 30l. 3s. 2d., for meat supplied to the defendant, being for the same debt as was included in the defendant's schedule. The defendant appeared to the action, but did not plead thereto, being advised that he could not plead his protection in bar. Judgment was signed by default. On the 15th April, 1847, a writ of *sci. fa.* was issued to revive the judgment, and notice thereof, dated 30th April, 1847, was shortly afterwards served upon the defendant. The defendant took no notice of the *sci. fa.*, whereupon a *ca. sa.* was issued, and he was taken and put in gaol at Worcester.

On the 20th July, 1847, the defendant's attorneys applied to Mr. Commissioner *Holroyd*, (who was then sitting for Mr. Commissioner *Evans*, the commissioner who had signed the defendant's protection,) through Mr. *Lucas*, their counsel, who moved the court for an order to discharge the insolvent from the custody of the keeper of the gaol at Worcester. Mr. Commissioner *Holroyd*, after hearing the arguments of Mr. *Lucas*, refused to make such order. Mr. *Lucas* thereupon made the following indorsement upon his brief, which was read over to the commissioner and approved by him, and signed by Mr. *Lucas*.

"Mr. Commissioner *Holroyd* says, he is of opinion, the 29th sect. of 7 & 8 Vict. c. 96, applies to cases where a protecting order has been granted under the 28th sect. of that act, and therefore the prisoner is not entitled to his discharge by virtue of that 29th sect. The commissioner is further of opinion, that the case of *Toomer v. Gingel*<sup>a</sup> does not sufficiently decide, that the prisoner might not have pleaded in bar to the plaintiff's action, the plea given by the 10th sec., 5 & 6 Vict. c. 116, as in the present case the final order is not merely an order for protecting the person (as in *Toomer v. Gingel*) but for protection and distribution, and as the 74th sect. of the 7 & 8 Vict. c. 96, enacts, that (except as herein provided) the 5 & 6 Vict. c. 116, is not repealed or in any way altered—and there being nothing in the 7 & 8 Vict., repealing or affecting the plea in bar given by the 5 & 6 Vict. c. 116, s. 10, the commissioner cannot order the prisoner's discharge under any general jurisdiction the court may possess."

The defendant's attorney, therefore, on the 23rd July, 1847, took out a summons to show cause why the defendant should not forthwith be discharged out of the custody of the keeper of the county gaol at Worcester, he, the de-

fendant, having filed his petition in the Court of Bankruptcy, and included the name of the plaintiff, and the amount for which this action was brought in his, the defendant's schedule to such petition, and obtained his final order for protection from process under 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, previously to the commencement of this action. This summons was attended by the attorneys of the plaintiff and defendant.

Mr. Baron *Platt* was of opinion, that the defendant could not have pleaded his protection in bar to this action—that the defendant not having kept up his instalments pursuant to the proposals contained in his final order, was nothing to the plaintiff—that the commissioner had power to imprison the defendant for such default.

The plaintiff's attorney then stated, that the defendant had renewed the debt by entering into a fresh contract, and had paid money to him on account. The judge accordingly adjourned the summons till 27th July, 1847, for an affidavit of these facts. When the parties again attended, it did not appear from the plaintiff's attorney's affidavit, or otherwise, that the defendant had renewed the debt. But the judge stated that the defendant having neglected to take notice of the *sci. fa.*, he wished to consider that point, and took the papers home with him. On the following morning the judge made the order for the defendant's discharge, but no action to be brought.

Plaintiff's attorney, Mr. *H. D. Draper*.

Defendant's attorneys, Messrs. *Smith, Witham, and Brookfield*.

## SELECTIONS FROM CORRESPONDENCE.

To the Editor of the *Legal Observer*.

### ATTORNEYS' GOWNS.

SIR,—I have seen with some surprise that you advocate the use of the gown by attorneys attending the County Courts as advocates! upon what ground I know not. Respectable solicitors require no badge of distinction, and why should they choose this time of all others to assert their dignity? The legislature has so far thought proper to insult them, as to make it dependent upon the whim of the judge—it may be of only eight years standing—whether they shall be heard or not—or whether they shall receive any fees! The only use of the gown as it appears to me is, that there is a little bag attached, in which barristers used of old to put their fees, and as caps are not worn in court, it may be useful to hold the bag to the judge when they have to pray that he will "have mercy upon the advocate." I have met with the inclosed letter, which expresses the universal feelings of the Manchester attorneys.

Manchester.

A CONSTANT READER.

The following is extracted from the letter referred to:—

"I have received a circular letter from Mal-

don, urging me and others of the profession in Manchester, to assert our privilege of wearing a gown before the magistrates in petty sessions, at the quarter sessions, and assizes, and more particularly before the judges at the new County Courts. What my friends propose by bedecking themselves in their peacock's feathers, I know not. If some test of the honour and abilities of those attending the courts could be applied before the gown was put on, I grant it might be a source of ambition to earn such a badge, but it is not proposed to exclude the disreputable practitioner. It is not for a moment supposed that the gown would add either to the abilities of the wearer, or induce the low practitioner to leave off their nefarious practices. Indeed, I fear it would tend to raise the low practitioners upon more of a level with the respectable, in the eyes of the lower orders, and in so much do harm. The time it is proposed to introduce the gown appears to me very extraordinary. Attorneys have lived, and as a body have been highly trusted and highly respected for so many years, that they have hitherto wanted no outward show; but now the legislature has established courts throughout the kingdom expressly excluding attorneys from practising in them, excepting on sufferance, and in nine cases out of ten no fees allowed, they are urged to support their dignity, but at the same time to kiss the rod that is to scourge them—to strut about the courts with their gowns, mere shells, the kernels being removed. I sincerely trust the County Courts may prove of service to the public, but unless attorneys are admitted, and small but remunerating fees are allowed them as a matter of right, I doubt it. The wary will at all times overreach the unwary, and I defy the judge to unravel the case. As to Manchester the attorneys are too wise to adopt the gown; if retained by their clients they will attend the court as now constituted, but not unless they are retained, and their clients will not have less confidence in them, or less respect for them if they appear in their black coats.

“AN OLD LAWYER.”

#### ATTORNEY.—COSTS.

A., living within the jurisdiction of the Southwark Court of Requests, prior to the establishment of the New County Courts, was sued for a debt of 4*l.* odd, in the Court of Requests. His attorney advised him to defend the action, and that the Court of Requests had exclusive jurisdiction to debts of 5*l.* A writ of trial was issued, and a verdict found for the plaintiff. It appears that by a subsequent act, the superior courts had a concurrent jurisdiction, and which the defendant's attorney neglected to look at.

Is the attorney liable in damages to the defendant in consequence?

Can the attorney, considering such neglect, recover his costs from the defendant?

L.

#### WITNESS.—SHAREHOLDER.

Is a *shareholder* in a joint-stock bank, and who is not a public registered officer of it, a competent witness on behalf of the bank, in an action by its public registered officer, against a party for recovery of the amount of a bill of exchange.

AN OLD SUBSCRIBER.

### PROCEEDINGS OF LAW SOCIETIES.

#### METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

The Committee of Management have issued a concise statement of the objects of this Association, abridged from the former address, with a list of the members at present enrolled.

The Country Law Societies are zealously supporting the association, as will appear from the following resolutions:—

#### YORKSHIRE LAW SOCIETY.

At a General Meeting of the Yorkshire Law Society, held at Rockwood's Hotel, Pavement, York, on Friday the 16th July, 1847. William Richardson, Esq., the president, in the chair.

It was resolved,

That this meeting approves of the objects of the Metropolitan and Provincial Law Association, set forth in the address of the committee of management, and is of opinion that the time has arrived when a general union of all the members of the profession is imperatively required, for the purpose of resisting further aggressions upon them.

That the members of this society in their various societies throughout the country, be requested to submit the address to such gentlemen as may offer themselves as candidates at the next general election, to ascertain their views respecting the matters therein contained, preparatory to the state of the profession being brought before parliament.

That the new association be recommended to the cordial support of the profession in this county, and that a donation of 25*l.* in aid of its funds be made by this society.\*

#### MANCHESTER LAW ASSOCIATION.

Resolved,—That Mr. Crossley, Mr. Makinson, Mr. Heron, (Town Clerk of Manchester,) Mr. Gibson, (Town Clerk of Salford,) Mr. Allen, and the Hon. Secretary, be appointed a deputation for the purpose of submitting to the members for Manchester and Salford, the address issued by the Metropolitan and Provincial Law Association, and to request their earnest consideration of the same.

#### DENBIGHSHIRE AND FLINTSHIRE LAW ASSOCIATION.

At a General Meeting of the Denbighshire

\* We stated the substance of these resolutions on the 24th July, p. 295, *ante*.



and Flintshire Law Association, held at Ruthin, July 26, 1847. Mr. Peers in the chair.

Resolved, (*inter alia*),

That a copy of the address of the Metropolitan and Provincial Law Association be forwarded to such gentlemen as may offer themselves as candidates for the counties and boroughs of Denbigh and Flint, at the approaching general election, for their serious consideration of the topics therein referred to, preparatory to the state of the profession being brought before parliament; and that the members of this society who may be retained as electioneering agents, be requested to call the earnest attention of the respective candidates to the subject-matter of the said address.

J. LEWIS, *Hon. Secretary.*

On the subject of these parliamentary exertions we refer to another part of this number, p. 361, *ante*.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### Common Law Courts.

#### 1. LAW OF ATTORNEYS.

##### ACTION BY AN ATTORNEY.

See *Venue*.

##### ARREST OF ATTORNEY.

See *Privilege*.

##### ARTICLES OF CLERKSHIP.

*Enrolment.—Return of premium.*—Where in September, 1843, a party was articulated to an attorney, who neglected to have such articles duly enrolled, but at the time of the execution handed them over to the clerk to keep them safely, and never afterwards took any measures to get them enrolled; and it was sworn by the clerk that he was ignorant of the necessity of such enrolment, and thought everything necessary had been done until November last, and had since made ineffectual attempts to induce his master to get the articles enrolled, and was treated with personal violence by him; the court granted the clerk permission to enrol the articles himself, and directed that the service of such clerk (three years and a-half) should be computed from the date of his articles.

And also granted a rule calling upon the attorney to show cause why the clerk should not be discharged from his articles, and why it should not be referred to the Master to report what part of the premium should be returned. *Ex parte John Urwin*, 34 L. O. 13.

##### ATTACHMENT.

See *Undertaking*.

##### BILL OF COSTS.

1. *Chancery.—Common Law.*—Where an attorney's bill contains charges for business done in the Court of Chancery and also in

a common law court, it should mention each court in which such business was done. Therefore, where a bill stated that some of the charges were for business done in the Court of Chancery, and it did not appear in what court the other business was done, except that the items showed that it must have been in one of the superior common law courts: *Held*, insufficient, under the 6 & 7 Vict. c. 73. *Ivimey v. Marks*, 34 L. O. 107.

2. *Court in which proceedings are taken.*—An attorney's bill must show the court and the cause in which the business referred to in it, or the greater part thereof, was done. These particulars should be expressly stated, (held to be necessary by *Maule, J.*) or must be capable of being collected by fair and reasonable intendment from the nature of the several items of charge. *Martindale v. Falkner*, 2 C. B. 706.

Cases cited in the judgment: *Lewis v. Primrose*, 13 Law J., (N.S.) Q. B., 218; 6 Q. B. 265; *Frowd v. Stillard*, 4 C. & P. 51.

3. An attorney's bill must give in some part of it substantial information of the court in which the business has been done. *Engleheart v. Moore*, 4 D. & L. 60.

Case cited in the judgment: *Lewis v. Primrose*, 6 Q. B. 265.

##### CERTIFICATE, RENEWAL OF.

Where an attorney has neglected to procure a stamped certificate to practise within twelve months from the time of his admission, the court will, under special circumstances, dispense with his giving the requisite notices under the rule of Easter Term, 1846, and allow him to take out his certificate at once, without payment of any arrears. *Ex parte Weymouth*, 34 L. O. 252.

##### CLIENT.

In an action brought in the name of the executor of a deceased party by a receiver appointed by the Court of Chancery, to recover a debt due to the estate, a judge's order was made by consent to stay proceedings, on payment by the defendant of a certain sum, together with "costs to be taxed as between attorney and client;" *Held*, on motion to review the Master's taxation, that the costs of obtaining the requisite permission of the Court of Chancery to bring the present action, were not costs which the defendant was bound to pay under the above order. *Lipscombe v. Turner*, 4 D. & L. 125.

##### COUNSEL'S SIGNATURE.

A verdict having been taken for the plaintiff, subject to a case to be settled by a barrister, and the defendant having refused to procure the signature of a serjeant to the case when so settled, the court made a rule, that the record and postea should be delivered by the associate to the plaintiff, unless the defendant should, within a week, cause the case to be signed. *Doe d. Phillips v. Rollings*, 2 C. B. 842.

##### LIEN.

F. and R., attorneys in partnership, are em-

ployed by *J.* *R.* dies, and *F.* is afterwards employed by *J.* as his attorney, and in respect of work done after the death of *R.*, certain deeds are given into the custody of *F.* by *J.* The bill of costs for work done by *F.* after the death of *R.* was paid by *J.*, but the joint account was unpaid.

*Held*, that *F.* had no lien on those deeds so as to enable him to retain them in respect of the bill of costs due from *J.* to *F.* & *R.* *In re Ford*, 34 L. O. 277.

#### NEGLECTANCE.

*Filing return of writ.*—Under the 2 W. 4, c. 39, s. 10, which says, that the writs therein mentioned “shall be returned *non est inventus*, and entered of record,” an attorney is bound to make the return of *non est inventus*, and to bring the writ, with such return, to the proper officer of the court to be by him filed of record. The word “returned” in the statute includes filing so far as an attorney can file a writ.

In an action against an attorney for negligence, the declaration alleged “that the defendant did not nor would file the said writs.” *Held*, that if there was any sense of the word “file” in which an attorney could be liable to perform that duty, the declaration would after verdict be good; that in this case there was such a sense of that word, as he was bound to bring the writ to the proper officer in order to be filed of record. The judge having received evidence of what was the practice in this respect, directed the jurors, that the omitting to act in accordance with an established practice was negligence, and he left it to them to say whether that practice had been so well understood that the plaintiff had been guilty of gross negligence. *Held*, no misdirection. *Hunter v. Caldwell*, 34 L. O. 11.

#### PRIVILEGE.

*County Court.*—*Arrest.*—On motion to discharge out of custody an attorney of this court who had been arrested whilst attending in his professional capacity at a County Court: *Held*, that the affidavit need not show that he had signed the roll of attorneys of the County Court, in pursuance of the 6 & 7 Vict. c. 73, s. 27; or that there was no roll of attorneys kept in the County Court. *Clutterbuck v. Hulls*, 4 D. & L. 80.

#### TAXATION.

In the year 1840, an attorney in London employed an attorney at Cambridge to prosecute a person for bribery. There was no agreement as to agency charges. In the year 1841, a bill was delivered, and another in the year 1842, both unsigned. In the year 1847, a signed bill was delivered, and a month afterwards an action was commenced. A judge at chambers having made an order to tax the bill: *Held*, on motion to rescind the order, that the bill was taxable, (overruling *In re Simmons*, 3 D. & L. 156); and that the delivery of the signed bill was a “special circumstance” which authorized the taxation, although the defendant might have taxed the unsigned bills. *Billing v. Coppock*, 34 L. O. 159.

#### UNDERTAKING.

*Consideration.*—*Attachment.*—Final judgment having been signed against *G.*, his attorney wrote to the plaintiff as follows:—“In consideration of your agreeing to suspend execution upon this judgment, I hereby undertake to make an arrangement with you respecting payment of the debt and costs prior to *G.* being discharged from prison under his present detainers; or in the event of your not agreeing to the terms offered by me, to inform me in sufficient time of *G.*’s intended discharge, so that you may not be deprived of your power of lodging a detainer against him.” *Held*, not to amount to such an undertaking to pay debt and costs as the court would enforce.

It is no answer to a rule calling upon an attorney to perform an undertaking given in a cause in this court, that he is not an attorney of this court. *Thompson v. Gordon*, 4 D. & L. 49.

#### VENUE.

*Action by attorney.*—In an action by an attorney since the Uniformity of Process Act, he does not waive his privilege of retaining the venue in Middlesex, by suing in person, without naming himself as attorney on the record. *Cutts v. Surridge*, 4 D. & L. 373.

Case cited in the judgment: *Wright v. Skinner*, 4 Dowl. 745; 1 M. & W. 141.

#### LAW OF COSTS.

##### AFFIDAVIT.

*Addition.*—*Jurat.*—Where there is a defect in the jurat of an affidavit the court will discharge the rule with costs.

In an affidavit made by general deponents the name of one was written against the jurat, but it did not appear that he was the person making the affidavit. *Held*, insufficient.

An affidavit must contain the addition of each deponent. *Cobbett v. Oldfield*, 33 L. O. 551.

##### ARBITRATION.

See *Taxation*.

##### DISCONTINUANCE.

After judgment for defendant on demurrer to one of several counts, the plaintiff took out a side-bar rule to discontinue the action generally. (see *Reg. Gen. Hil.*, 2 W. 4, art. 106). The defendant’s costs, not of the demurrer only, under 3 & 4 W. 4, c. 42, s. 34, but of the whole action, were taxed on the rule to discontinue, treating that rule as the termination of the action, and were received by defendant’s attorneys as defendant’s costs “on discontinuance of the action.” Judgment was entered up on the record for the defendant on the first count only: *Held*, that the discontinuance, being issued after judgment without leave of the court, was irregular, and that the judgment was also irregular. The judgment was set aside without costs. *Benton v. Polkinghorne* 16 M. & W. 8.

## FEME COVERT.

A *feme covert* who succeeds on a plea in bar of coverture, is entitled to costs. *Findley v. Farquharson*, 4 D. & L. 185.

## INTERPLEADER.

*Issue.—Judge at chambers.*—Where a judge at chambers has directed an interpleader issue, any subsequent application as to costs, &c., must be made to the same judge, and not to the court. *Marks v. Ridgway*, *Collins v. Ridgway*, 34 L. O. 255.

## JUDGMENT AS IN CASE OF A NONSUIT.

*Costs.*—*Semble*, that a defendant is not entitled to judgment as in case of a nonsuit, when the plaintiff has allowed two assizes to elapse without proceeding to trial after issue joined on a feigned issue under the Tithe Commutation Act, 6 & 7 W. 4, c. 71, s. 46, but should move for the costs of the action under that section.

The discretion as to allowing costs in such a case is to be exercised in accordance with the general rule which gives costs to the successful party, unless there be special circumstances to justify a departure from such general rule.

When, therefore, the plaintiff declined to proceed to trial, because a decision of the court had so narrowed the issue as to render it inexpedient for him to incur the expense of a trial: *Held*, that the defendants were entitled to their costs. *Tomlinson v. Boughey*, 2 C. B. 844.

## MANDAMUS.

5 & 6 W. 4, c. 76, s. 92.—*Certiorari.*—The town council of *L.* dismissed *A.*, the town clerk, and refused to allow him compensation. A mandamus issued, and the town council returned that they had dismissed *A.* for misconduct, and set out the grounds of dismissal. The return was traversed, the jury found a verdict for *A.*, and a peremptory mandamus issued to award compensation.

*Held*, that the town council, acting under a *bonâ fide* supposition that *A.* had been guilty of misconduct, the costs of these proceedings were properly allowed out of the borough fund, under the 92nd section of 5 & 6 W. 4, c. 76.

That a retainer given by the town council to their attorney to show cause against the writ of mandamus, was sufficient to justify him in the subsequent proceedings taken in resisting the claim for compensation.

It is no objection to this order returned by *certiorari*, that no bill of costs had been properly delivered.

A notice of a meeting to take into consideration the accounts of the borough is sufficiently explicit; at all events, the party objecting should have attended the meeting, and there have objected to the payment of these costs. *The Queen v. The Town Council of Litchfield*, 34 L. O. 104.

## NOTICE OF TAXATION.

*Postponement of trial.*—Where a party obtains an order for the postponement of the trial

of a cause on payment of costs of the day, he must give notice of taxation of such costs, otherwise the other party may go on to trial. *Waller v. Joy*, 16 M. & W. 60.

## POSTPONEMENT OF TRIAL.

*Appointment to tax.* Where a defendant obtains a judge's order to postpone a trial on payment of costs, he should serve an appointment to tax with the order; and where he omitted to do so, and the plaintiff treated the order as a nullity, and proceeded to trial, the court refused to set aside the verdict so obtained, except upon payment of costs by the defendant. *Waller v. Joy*, 4 D. & L. 338.

See *Witness*.

## REGISTRATION APPEAL.

*Effect of judgment.*—After the court has granted costs on the final determination of a registration appeal, it will not entertain an application to rescind the order with respect to costs. *Gale v. Chubb*, 33 L. O. 355.

## REMANET.

1. The costs occasioned by a cause being a remanet are costs in the cause not taxable as costs of the trial, on a rule for a new trial on payment of costs. *Bentley v. Carver*, 2 C. B. 817.

2. In an action of trespass the defendant pleaded four pleas, upon which issues were joined. The cause was entered for trial at the assizes, and made a remanet. The defendant afterwards obtained an order to amend one of the pleas, and the cause was tried at a subsequent assizes, where a verdict was given for the defendant on the amended plea (which covered the whole cause of action) and for the plaintiff on the other pleas: *Held*, on motion to review the taxation, that the plaintiff was entitled to the costs of the remanet. *Walker v. Blacklock*, 4 D. & L. 4.

## SEVERAL ISSUES.

In an action on the case for defamation, the declaration contained three counts. At the trial the verdict was for the defendant on the two first counts, and for the plaintiff on the third count, with 150*l.* damages: subsequently the judgment was arrested on the third count: *Held*, that the defendant was only entitled to his costs of the issues found for him, and not to the general costs of the cause. *James v. Brook*, 34 L. O. 105.

## SPECIAL CASE.

1. Where, upon the moving for a new trial, the parties agree to state a special case, (nothing being said about the costs,) but no case is ultimately agreed upon, the costs of such abortive case are not costs in the cause. *Foley v. Botfield*, 16 M. & W. 65.

2. Where, after verdict, the court recommended a special case, which was acceded to by both parties, but which was never finally settled, by reason of the defendant's default: *Held*, that the plaintiff, who held the general costs of the cause, was not entitled to the costs

of the abortive special case. *Foley v. Botfield*, 4 D. & L. 328. **RECENT DECISIONS IN THE SUPERIOR COURTS.**

**SUGGESTION ON RECORD.**

See *Trespass*.

**SUMMONS AT CHAMBERS.**

*Costs after abandonment.*—After a summons obtained before a judge at chambers has been abandoned by the party obtaining it, this court will not entertain an application to compel such party to pay the costs consequent thereon. The mode of enforcing payment (if at all) is by another summons at chambers. *Stockbridge v. Owen*, 34 L. O. 135.

See *Interpleader*.

**TAXATION.**

*Arbitration.*—After issue joined in an action on the case for diverting a water-course, “all matters in difference in the cause” were referred by a judge’s order to arbitration, “the costs of the said suit to abide the event of the award;” but no power was given to the arbitrator to certify under the 3 & 4 Vict. c. 24, s. 2. The arbitrator found for the plaintiff on all the issues, and assessed his damages at 6*d.*; and the Master thereupon allowed the plaintiff the full costs: *Held*, upon motion to review the taxation, that the court would construe the meaning of the parties to be, that the 3 & 4 Vict. c. 24, s. 2, should not apply; and that, therefore, the taxation was correct. *Griffiths v. Thomas*, 4 D. & L. 109.

See *Notice of Taxation*.

**TRESPASS.**

*After notice.*—3 & 4 Vict. c. 24.—*Suggestion on the record.*—Where, in an action for a trespass committed after a notice not to trespass, the damages recovered are under 40*s.*, and the judge at the trial does not certify, the plaintiff is entitled to enter a suggestion on the record of such notice, in order to obtain his full costs.

A notice that, unless the defendant removed certain stakes in such a manner as should be satisfactory to the plaintiff, a further action would be brought, is a sufficient notice not to trespass within the meaning of the 3 & 4 Vict. c. 24, with reference to the question of costs in a second action of trespass for continuing to keep up such stakes. *Bowyer v. Cook*, 34 L. O. 106.

**TRIAL.**

See *Notice of Taxation; Postponement; Witness*.

**WITNESS.**

*Postponement of trial.*—A trial was postponed, on the application of a defendant, from the Summer to the Spring Assizes. Proceedings were afterwards stayed on payment of debt and costs.

The court held that the Master was right in allowing subsistence money to a material witness detained by the plaintiff from the time of his first attendance pursuant to the subpoena, to that of settling the action. *Evans v. Watson*, 4 D. & L. 193.

Case cited in the judgment: *Berry v. Pratt*, 1 D. C. 276 2 D. & R. 424.

**REPORTED BY BARRISTERS OF THE SEVERAL COURTS.****Lord Chancellor.**

*Jenkins v. Jenkins*. July 29th, 1847.

**NEW ORDERS (NO. 69).—LEAVE TO AMEND.—REASONABLE DILIGENCE.**

*Unless reasonable diligence be shown by the plaintiff in moving under the 68th Order of May, 1845, for special leave to amend his bill, the court will refuse such motion when the proposed amendment would entirely alter the frame of the bill and materially affect the other defendants.*

Mr. Collins moved to discharge an order of the Vice-Chancellor of England refusing the plaintiff leave to amend his bill by striking out the name of a co-plaintiff for the purpose of making the latter a defendant and thus obtaining his evidence in the cause. The bill was filed in October, 1846, with the object of establishing a charge of 100 pounds on a certain estate, under a deed in which the bill alleged that an erasure had been made of the 2 *orts* and the *p*, leaving merely the figure and letters of 1 *ounds*. The answer to the original bill was filed on the 2nd of November, 1846, and denied all knowledge of any erasure, or of the party by whom it had been made, or that it was the settlor’s intention to charge the land with the sum alleged in the bill, and submitted that such could not have been his intention, as the space between the figure 1 and the letters *ounds* was not sufficient for the insertion of 2 *orts* and a *p*. Notice of motion to produce the deed was served in March, 1847, and on the 7th of the following June the motion now appealed against was made by the plaintiff, but was ordered by the Vice-Chancellor to stand over for the purpose of affording to the plaintiff an opportunity of showing that he had used due diligence in proceeding with the suit since the filing of the defendant’s answer. The motion was ultimately refused on the 17th of July. Some delay had been occasioned by going before the Master in May last, previously to applying to the Vice-Chancellor.

Mr. Collins read an affidavit of the solicitor, stating the dates of several applications and inquiries respecting evidence of the erasure, and submitted that the court would permit the amendment upon payment of the costs of the application and on giving security for those which had been incurred by the co-plaintiff, whose name it was now proposed to strike out. He referred to the case of *Foreman v. Gray*, 9 Beavan, (33 L. O. 452, 586).

Mr. James opposed the application on the grounds that due and reasonable diligence had been made by the plaintiff in coming to the court for this order, as he admitted that the answer had been received early in November last, and had been ever since that time aware of the defence.

Mr. Collins in reply said, that such a defence had not been anticipated, and therefore no evidence had been prepared to rebut it.

The Lord Chancellor said, that the new orders lay down certain principles which must bind the court. He thought this the simplest case possible for adjudication. The bill rested on certain erasures; the plaintiff knows early in November the defence to it, what he has to prove, and that he must have evidence. Nothing whatever is done, so far as the court is concerned, until the latter end of May, except making inquiries for different persons in various parts of the country, and making a few simple amendments to the bill. His lordship should have thought that 8 or 10 days would have been amply sufficient for ascertaining and determining what should be done, and therefore considered that the Vice-Chancellor had come to a right conclusion. The new orders were made for defining and expediting the practice of the court, and must not be departed from, unless a strong case for indulgence be made out, and where the other side will not be prejudiced. In the case last heard by his lordship, (*Wragg v. Wragg*, 357, ante,) the defendant could not possibly be injured by granting the indulgence asked; but here the whole frame of the bill is required to be altered, and a new case made out. The motion must be refused, with costs.

#### Rolls Comt.

*Kilmer v. Leach.* July 6th, 7th, 9th and 26th.

#### SETTLEMENT.—NEXT OF KIN.—PERSONAL REPRESENTATIVES.

*Held, upon the construction of a settlement containing an ultimate limitation to the next of kin or personal representatives of A. in a due course of administration according to the Statute of Distributions, that the wife of A. who survived him was excluded.*

THIS was a bill by the nephew of a Mr. John Allen, claiming a sum of 5,000*l.* 3¼ per cents. standing in the name of Mr. John Leach as surviving trustee of a settlement made the 5th of September, 1806, upon the marriage of John Allen with Lady F. Turnour. The stock was settled after the deaths of the husband and wife, and in the event, which happened, of there being no children, in such manner as John Allen should appoint by deed or will, and in default of appointment, in trust for the next of kin or personal representatives of the said John Allen, in a due course of administration according to the Statute of Distributions. The settlement contained similar provisions in respect to property settled on the part of Lady F. Turnour. John Allen died on the 31st of May, 1835, leaving his wife surviving, and without having exercised his power of appointment, but having by his will bequeathed all his personal estate and effects after the death of his wife, to two charities,—the Refuge for the Destitute, near Shoreditch, and the Asylum for the Blind, near St. George's Fields. From the

death of John Allen until the year 1842, it appears to have been assumed that the will of John Allen operated to pass the 5,000*l.* The sum was treated as part of his personal estate by his executors in a suit of *Attorney-General v. Clarke*, instituted in September, 1832, on behalf of the above charities, and, by an order of the 7th May, 1842, made upon the death of Lady Allen, the 5,000*l.* was directed to be equally divided between the charities. Then, however, the want of any appointment of the sum was discovered and the present suit instituted. Three claimants to the stock now appeared,—1st, the plaintiff as next of kin; 2ndly, the representatives of Lady Allen, as entitled to a share under the Statute of Distributions; 3rdly, the two charities, contending that the limitation in the settlement was either a gift to the personal representatives of John Allen, or was void for uncertainty, and that in either of these cases the 5,000*l.* would pass by the will of John Allen as part of his personal estate. This view was also supported by his executors, who were interested in preventing the personal estate from being diminished, because the costs of the previous suit had been apportioned between the real and personal estate, upon the assumption that the latter comprised the sum of 5,000*l.* stock.

Mr. Turner and Mr. Rogers, for the plaintiff, cited *Bailey v. Wright*, 18 Ves. 49; *Garrick v. Lord Camden*, 14 Ves. 372; *Atkinson v. Baker*, 4 T. R. 229; *Cholmondeley v. Ashburton*, 6 Beav. 86; and *Worseley v. Johnson*, 3 Atk. 75, to show that Lady F. Allen was excluded as not being of kin to John Allen, and referred to the limitation in the case of the property settled by the wife in support of this argument, for the husband could never have been allowed to take the whole of that.

Mr. Tinney, Mr. Roupell, and Mr. Malins, for the charities, cited *Scott v. Moore*, 14 Sim. 35; *Smith v. Barnaby*, 10 Jur. 748; *Suberton v. Skeeles*, 1 Russ. & M. 587; *Attorney-General v. Malkin*, 2 Phil. 64; *Jennings v. Gullimore*, 3 Ves. 147; and *Godsall v. Well*, 2 Keen, 99, to show that the gift to the legal personal representatives of John Allen in a due course of administration would preserve the 5,000*l.* as part of his general personal estate. A gift to the next of kin would be inconsistent with the direction that the fund should go in a due course of administration, for then it would be applicable in the first place to pay debts. Either, therefore, the words next of kin must be rejected, or the limitation treated as void for uncertainty. *Lowndes v. Stone*, 4 Ves. 650; see 2 M. & K. 794.

Mr. S. Miller for the executors.

Mr. Kindersley and Mr. Roundell Palmer, for the representatives of Lady Allen, referred to *Long v. Blackwood*, 3 Ves. 486, to show the reluctance of the court to hold a will void for uncertainty, and that a course of administration included more than the payment of debts; and to *Cotton v. Cotton*, 2 Bea. 67; *Booth v. Vicars*, 1 Coll. 6; *Walker v. Malkin*, 6 Ves. 146; *Robertson v. Smith*, 6 Sim. 47; *Minter v.*

*Wraith*, 13 Sim. 52; *Baines v. Otley*, 1 M. & K. 465; *Bridges v. Adam*, 3 Bro. C.C. 226; the observations of the Vice-Chancellor in *Elmsley v. Young*, 2 M. & K. 787; *Harrington v. Hart*, 1 Cox, 130; and *Shifferth v. Badham*, 10 Jur. 893, to show that legal personal representatives did not necessarily mean executors or administrators, and that the words next of kin might mean those entitled to take under the statute; and urged that the alternative gift in the present case was intended to provide for the contingency of Mr. Allen surviving his wife or dying in her lifetime.

Lord Langdale, after stating the facts of the case and the different claims advanced, said, it appeared to him clear that the sum of stock in dispute did not form part of the general assets of the testator; the only question, therefore, was, whether the wife was entitled to a share in the events that had happened, or not. He thought that in such a case, there being no child and no appointment, it was the intention of the settlors that each of the sums settled should revert to the family of the settlor; that the husband, therefore, should give up his marital rights, and the wife, in like manner, all such interest as she might have in her husband's property. It had been argued with great ability, that the phrase "next of kin, or legal personal representatives, under the statute" was intended to provide for the two alternatives of the wife dying before or surviving her husband; the former words applying to the first alternative, and the latter to the second. But he did not think that was the intention of the settlors. Cases had been cited to show that the words "legal personal representatives" would include the wife. But he did not think that these cases showed the words "personal representatives" to have acquired any such technical sense as to oblige him to construe them in a way contrary to the apparent general intention. Therefore, the wife must be excluded, and the plaintiff declared to be entitled as sole next of kin.

### Vice-Chancellor of England.

*Fentiman v. Fentiman*. July 15th, 1847.

ANNUITIES CHARGED ON PERSONAL ESTATE AND THE RENTS OF REAL ESTATE.—INSUFFICIENCY OF FUND.—TRUST FOR SALE OR MORTGAGE OF REAL ESTATE.

*Where by will certain annuities were charged on personal estate and the annual rents and profits of freehold and copyhold estates, and the personal estate was exhausted, and the rents and profits of the real estate were insufficient to pay the arrears of the annuities: Held, that such arrears should be raised by sale or mortgage of the real estates.*

J. FENTIMAN, by his will, dated 23rd November, 1836, gave all his personal estate on trust to be converted, and he directed that his trustees should, out of the annual produce thereof, or if need be, by the sale of a sufficient part of the principal, pay his wife an annuity of

200*l.*, and a like annuity of 200*l.* to M. A. Hay; and that, if occasion should require, should, out of the rents, issues and profits of his freehold and copyhold estates provide and pay so much or such part or parts, if any, of the same annuities or either of them, as his said personal trust estate should be insufficient to discharge. On the cause coming on for further directions, it appeared that the personal estate was exhausted, that the annual rents of the real estate were insufficient to keep down the annuities, and that there was a considerable sum due for arrears. The question was, whether these arrears should be raised by sale or mortgage of the real estate.

Mr. J. Parker and Mr. Llewellyn for the plaintiff, the residuary devisee, urged that the annuities were charged merely on the rents, and not on the corpus of the real estate, and there was no authority whatever for selling or mortgaging the real estate to satisfy such arrears, citing *Foster v. Smith*, 1 Phill. 629.

Mr. Shapter and Mr. De Gex, for the annuitants, contended, that the primary object of the testator was to provide for the annuities, and that all other directions in the will were subsidiary to that; that a trust to be performed out of the rents and profits will be considered a charge on the corpus, unless there is something in the will inconsistent with such a construction. They cited *Allan v. Backhouse*, 2 Ves. & B. 65; *Baines v. Dixon*, 1 Ves. sen. 41; *Arundell v. Arundell*, 1 Myl. & K. 316.

The Vice-Chancellor held, that the arrears of the annuities should be raised either by a sale or mortgage of the freehold and copyhold estates.

*Brocklebank v. Whitehaven Railway Company*.  
July 19th, 1847.

PURCHASE OF LAND.—EXPIRATION OF POWERS GIVEN BY A RAILWAY ACT.—INJUNCTION.

*Where a power for the compulsory purchase of land is given by act of parliament for the space of three years, and before the expiration of the three years a jury meet to assess the value of certain land, but do not find a verdict until after the expiration of the three years, Held, that such verdict went for nothing, and an injunction granted to restrain the company from proceeding to take possession of the land.*

AN act of parliament for making a railway from Whitehaven to Maryport received the royal assent on the 4th July, 1844. At the time of the date of the act the Lands Clauses and Railway Clauses Consolidation Acts had not passed, and the act in question contained all the usual powers subsequently embodied in the general acts. By the 220th section it is enacted that the powers of the company for the compulsory purchase of land should not be exercised after the expiration of three years from the passing thereof. On the 5th March, the company gave notice to plaintiff that they were desirous of purchasing a piece of land of him.

The plaintiff refused to accept the amount of purchase-money offered; negotiations ensued, which ended in nothing, and on the 19th June the company gave notice to the sheriff requiring him to impanel a jury to assess the value of the land at the expiration of fourteen days from the notice, pursuant to the power contained in the statute. On the 3rd of July the jury assembled, but did not agree as to the amount of purchase-money until the 6th of July.

Mr. Bethell and Mr. Wray now moved for an injunction to restrain the company from depositing the purchase-money in the bank, or from issuing a process to the sheriff requiring him to deliver possession of the land to the company, contending that the verdict of the jury went for nothing, inasmuch as the powers in the act had expired on the 4th of July.

Mr. Stuart and Mr. Malins, contra, submitted that the powers of the act were properly exercised, and that there was nothing in the act to intercept the authority given to the sheriff. In construction of law the verdict of the 6th was the verdict of the 3rd of July; the service of the notice created the relation of vendor and purchaser, and neither party could afterwards recede. *Doo v. London and Croydon Railway*, 1 Rail. Cases, 257; *Stone v. Commercial Railway*, 1 Rail. Cases, 375.

The Vice-Chancellor, after reading the clauses of the act, said, he thought the case was very clear. By the 220th section it was provided that the compulsory power given by the act for the purchase of land should not be exercised after the expiration of three years from the passing of the act. According to the plain meaning of the words the power of compulsory purchase must mean the payment of the amount of purchase-money ascertained into the bank, pursuant to the 152nd section. The jury not having given their verdict until after the time limited by the act had expired, he was of opinion that the compulsory power given by the act had expired, and that the injunction must be granted as a matter of course.

*Trulock v. Robey.* June 2nd, 1847.

#### BILL OF REVIEW,—DEMURRER.

*In a bill of review the error in the decree must be apparent on the face of it, and it is not sufficient to support such a bill that under the prayer for general relief of the original bill plaintiff might have obtained a fuller decree, it being admitted that he was not entitled to all the relief obtainable under such prayer.*

In this case, J. Robey the elder became entitled to one moiety absolutely of certain copyhold premises, and as to the other moiety, having a mortgage thereon, he entered into possession of the whole, and on his death J. Robey the younger, as customary heir of his father, became entitled in like manner, and entered into possession. Plaintiff, Mrs. Trulock, as heiress-at-law of one J. Hutchins, became entitled to

the legal estate in the moiety of the premises so mortgaged to J. Robey the elder, and on the 9th March, 1838, she and her husband filed their bill against J. Robey the younger for redemption of the mortgaged premises and for an account of the rents and profits which had been received by the said J. Robey the younger. He put in his answer, by which he admitted that J. Robey the elder, and also that he himself, had entered into possession of the premises and into the receipt of the rents and profits, and that neither of them had ever accounted for the same. By a decree in the cause dated the 19th November, 1841, the Master was directed to take an account of the rents and profits of the mortgaged premises received by the said J. Robey the younger, and upon plaintiff paying to him what should be found due, with the taxed costs, within six months after the Master should have made his report, the defendant was ordered to surrender the one moiety to the plaintiff, clear of all expenses. In 1844, the Master by his report certified that he had not taken any account of the rents and profits received by J. Robey the elder, because he was not directed so to do by the decree, but he found that a certain sum was due to J. Robey the younger from plaintiff, for principal, interest, and costs on the said mortgage. Exceptions were taken by plaintiff to this report, but they were overruled. The sum so ascertained by the Master to be due to J. Robey the younger not having been paid to him at the time appointed, on December 2nd, 1844, he obtained an order for the dismissal of plaintiff's bill. A bill of review was then filed by plaintiff, stating all the foregoing proceedings, and insisting that the decree of 1841, which had been enrolled, was erroneous in not having directed an account to be taken of the rents and profits received by J. Robey the elder, and in not having directed an occupation rent to be fixed on the property during the term that J. Robey the elder and J. Robey the younger had been in possession, and praying that the said decree might be reviewed and reversed, and that the order of December, 1844, might also be reviewed or discharged. To this bill a general demurrer was filed for want of equity, and further for their being no error or matter in law apparent in the decree for which it ought to be reversed.

Mr. Bethell and Mr. Randall, for the demurrer, urged, that in order for a bill of review to hold, the error must be apparent on the face of the decree itself; that was not so here. To ascertain the error of the decree, it would in the present case be necessary to go through the whole of the original pleadings, and in fact rehear the suit. They cited *Coombes v. Proud*, Freem. 181; *Brend v. Brend*, 1 Vern. 213; *Glover v. Portington*, Freem. 182; *Haig v. Homan*, 8 Cl. & Fin. 321; *Perry v. Philips*, 17 Ves. 173.

Mr. Koe and Mr. Miller, for the bill, contended, that there was an error apparent on the decree, inasmuch as it did not direct an account to be taken of the rents and profits received



by J. Robey the elder. That the proceedings ought to be taken to form part of the decree, and the fact of reference having been made in the bill of review to the decree was sufficient to authorize the court to look at the whole of them. The case of *Glover v. Portington* was not in point, and *Coombes v. Proud* sanctioned the position, that the pleadings might be referred to. They also contended, that the decree was erroneous in directing the costs to be paid in the first instance, and added to the mortgage debt. They admitted that the plaintiff was not entitled to the whole relief which might be had under the general prayer for relief of the original bill, and offered to waive it. They cited *Dormer v. Fortescue*, 3 Atk. 124; *Mathews v. Walwyn*, 4 Ves. 121; *Smart v. Hunt*, 1 Vern. 418, note; *Jones v. Kenrick*, 5 Bro. P. C. 244; *Wilkinson v. Beale*, 4 Madd. 408; *Bonham v. Newcomb*, 1 Vern. 214; *Quarrell v. Bedeford*, 1 Madd. 269.

The Vice-Chancellor said, it was singular that the original bill did not ask for any account of the rent and profits received by J. Robey the elder, but only those received by J. Robey the younger. The bill certainly had a prayer for general relief, but he was not at all clear that under such general prayer for relief an account could be had against J. Robey the elder, especially when in point of law a particular account might have been had as against him, and an account as against J. Robey the younger only was asked for. It was urged upon him to correct the decree because the plaintiff might have asked for something more than he did, but it did not appear clearly what decree the plaintiff would have had, and how could he say that the decree was wrong because under it the plaintiff might have obtained more than in fact he had done, the plaintiff at the same time admitting that he could not have had a decree to the full extent under the prayer for general relief. From the bill of review it appeared that the decree was made on bill and answer, and it had been urged that other matters appeared in the answer besides those stated in the bill of review. How could he be called on to say that the decree was wrong when such matter was withheld from him? on its being brought forward it might have appeared that in point of fact something was due to J. Robey the younger that did away with the objection as to the costs. It did not appear to him that the decree on the face of it was erroneous, and therefore he should allow the demurrer.

#### Queen's Bench.

(Before the Four Judges.)

*Hudrick v. Heslop and another.* Trinity Term, 1847.

PRACTICE.—JUDGMENT AS IN THE CASE OF A NONSUIT.

*Where in an action of trespass on the case one of two defendants suffers judgment by default, the other defendant is still entitled*

*to judgment as in the case of a nonsuit for not proceeding to trial.*

THIS was an action on the case for a malicious prosecution, in which one of the defendants suffered judgment by default. The plaintiff and two other persons had been examined as witnesses, and were afterwards indicted for perjury, and separate actions were brought against the defendants. These actions came on for trial at the Durham assizes; one of them (*Wren v. Heslop*,) was tried, and in consequence of what took place at that trial, the record in the present case was withdrawn in order that additional evidence might be procured. A rule nisi was afterwards obtained in *Wren v. Heslop* for a new trial on the ground of misdirection, and the case now stands for argument in the new trial paper. A rule nisi was obtained for judgment as in the case of a nonsuit.

Mr. Cole showed cause, and contended that in actions of tort there cannot be judgment of nonsuit against one of the defendants after the other defendant has suffered judgment by default. In actions of assumpsit a different rule has now been established. *Murphy v. Donlan*,<sup>a</sup> *Jones v. Gibson*,<sup>b</sup> In *Harris v. Batterley*<sup>c</sup> it was held, that in trespass against several defendants, if any suffer judgment by default, the plaintiff cannot be nonsuited. In *Stuart v. Rogers*<sup>d</sup> the action was assumpsit, and *Parke, B.*, expressed an opinion that there might be a distinction between actions of trespass and actions of assumpsit.

Mr. Bliss contra. There is no reason why judgment of nonsuit should not be granted in cases of tort where one of two defendants has suffered judgment by default. Before judgment, nonsuit against one would be nonsuit against both, but after judgment by default by one, the action with respect to him is at an end, and as to the other, the plaintiff has a day given him to come into court. In *Parker v. Lawrence*<sup>e</sup> there was an action of trespass against three defendants; one pleaded the general issue, and a verdict and damages was given for the plaintiff; the other two defendants pleaded a justification, and there was a demurrer to the pleas. The plaintiff, after obtaining a verdict against one, entered a *nolle prosequi* as to the other defendants, and the court were of opinion that the proceedings were regular.

Lord Denman, C. J. We think this rule ought to be made absolute, unless a peremptory undertaking be given.

*Patteson, Coleridge, and Erle, Js.*, concurred. Rule accordingly.

*Richardson v. Chassen.* Trinity Term, 1847.

ASSUMPSIT.—ALLEGATION OF SPECIAL DAMAGE.

*In action for not assigning the lease and fixtures of certain premises pursuant to an*

<sup>a</sup> 5 Barn. & Cress. 178.

<sup>b</sup> Id. 768.

<sup>c</sup> Cowp. 483.

<sup>d</sup> 4 Mee. & Wels. 649.

<sup>e</sup> Hobart, 70.

agreement, the plaintiff alleged in his declaration, "that he had been necessarily put to great expenses." The court held that it was competent for the plaintiff under that allegation to give evidence of charges which he had become liable to pay to an attorney, and a value for work done in respect of the premises in question, although the charges were not paid at the time the action was commenced.

THIS action was brought upon an agreement by which the defendant agreed to assign to the plaintiff the lease of a public house, together with the fixtures. The declaration set out the agreement and alleged a breach, and contained an allegation by way of special damage, "that the plaintiff had been necessarily put to great expenses, amounting to a large sum of money, &c." The defendant paid into court the sum of 125*l*. In support of the allegation in the declaration, the plaintiff proved that he had employed an attorney and a surveyor with respect to the title and value of the premises, and had become liable to pay them for the work done. These charges and expenses were not paid before the cause came on for trial. The case was tried at the sittings after Hilary Term last, and admitting the evidence in support of these two items, a verdict was found for the plaintiff for a larger amount than the defendant had paid into court. In Easter Term last, a rule *nisi* was granted, calling upon the plaintiff to show cause why there should not be a new trial, or why a verdict should not be entered for the defendant. The question raised for the opinion of the court being, whether under this allegation in the declaration, evidence was admissible of those which the plaintiff had made himself liable to pay, but which had not been actually paid when the action was brought.

Mr. Watson and Mr. Warren showed cause, and relied on the case of *Dixon v. Bell*,<sup>1</sup> where in an action for wounding the plaintiff's son, *per quod servitium amisit*, the plaintiff was entitled to recover the amount of the surgeon's bill, although it had not been paid, but that he could not recover physician's fees which had not been paid. A rule for a new trial was afterwards applied for, and refused on other grounds, and this point was not mentioned to the court, *Dixon v. Bell*.<sup>2</sup> In *Jones v. Lewis*,<sup>3</sup> the words used were "forced to pay," but the fair meaning of the words "being put to expense," must mean having employed an agent to whom a person is under a legal obligation to pay.

Mr. Humfrey and Mr. Cleasby contra. There is a difference between payment and liability to pay. The plaintiff, in his declaration, has used words which only extend to money actually paid, and he now asks the court to extend the meaning of the expression, so as to include liability to pay. In *Pritchett v. Boevey*, the allegation in this declaration was, that the plaintiff had been forced and obliged to pay, and did pay large sums of money in applying

for and obtaining his discharge from imprisonment, and the court held that the plaintiff could only recover so much of the bill of costs as was paid out of pocket by the attorney.

*Per curiam.* Rule discharged.

#### MASTERS EXTRAORDINARY IN CHANCERY.

From June 22nd, to July 23rd, 1847, both inclusive, with dates when gazetted.

Armitage, James, Huddersfield. July 16.

Cutler, John Walford, Spurke Brook, Birmingham. July 13.

Edmonds, Edmund, Newent. July 20.

Edmonds, George, Birmingham. June 22.

Lamb, John, Barnard Castle. July 2.

Parr, William, Poole. June 25.

Phillips, Joseph, the younger, Stamford. June 25.

Roche, Charles Bennett, Daventry. July 9.

Whitehead, Thomas William, Rochdale. July 20.

#### THE EDITOR'S LETTER BOX.

The additional names of persons who have given notice of admission on the Roll for next Term will be found at p. 350, *ante*. These names could not be included in the former list, as they were not received at the time it was printed. The judges have thought it proper to allow their insertion *nunc pro tunc*.

Some of the articles which a contemporary does us the honour to take from our pages are duly cited, but others are borrowed without the proper acknowledgment; doubtless, this omission is unknown to the editor.

The entire List of the Public and General Statutes shall be given in the next or following week. Each number will contain some of the New Statutes, accompanied or followed by the necessary notes and explanations.

We have applied for the report mentioned by "A Bristolian."

The grievance stated by E. C., relating to the Ipswich County Court, shall be noticed.

Our new arrangements will enable us to afford more space to the Original Reports of recent and important Decisions.

Two more recent Statutes relating to the Law, will be found at pp. 365, 366, *ante*. The others will speedily follow.

We have disposed of some of the arrears of Correspondence, and the rest will be duly attended to.

The letters of "An Old Subscriber," "Civis," and "X." have been received.

Communications to be addressed to the Editor, at the Legal Observer Office, 32, Bell Yard, Lincoln's Inn.

<sup>1</sup> 1 Stark. 287.      <sup>2</sup> 5 M. and S. 198.

<sup>3</sup> 9 Dowl. 143.      <sup>4</sup> Crompt. and Mee. 775.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

---

SATURDAY, AUGUST 21, 1847.

---

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

## ELECTION RECOGNIZANCES AND SELECT COMMITTEES.

THE elections throughout the kingdom having now been brought to a close, we may conveniently consider the course of procedure to be adopted by those who are dissatisfied with the result in any particular case, and shall determine before the meeting of parliament, which is expected to be in November next, to appeal to that—which in all such cases is the tribunal of the last resort—a select committee of the House of Commons.

The law with respect to the trial of controverted elections is now governed chiefly by the statute 7 & 8 Vict. c. 103, and the analysis of its numerous and somewhat complicated provisions, will be rendered more simple and concise by limiting the consideration to petitions following a general election, and questioning the return of a member, or members, upon ordinary grounds. Bearing in mind that every election petition must be subscribed "by some person claiming therein to have had a right to vote, or to be returned or elected, or alleging himself to have been a candidate, at the election."

Before the petition is presented, however, the person or persons subscribing it, or some of them, must enter into a recognizance for 1,000*l.*, with one or more sureties, (not exceeding four,) in the same or a separate recognizance for the additional sum of 1,000*l.*, the condition being, that the petitioners shall pay all costs and expenses which the committee selected to try the matter of the petition shall adjudge to be payable by the petitioners, and also

pay the costs and expenses due and payable by the petitioners to any witness summoned in their behalf, or to the party who shall appear in opposition to the petition. Each of the sureties must make an affidavit of sufficiency, setting forth that he is possessed of real or personal estate of the clear value of the sum for which he enters into the recognizance, ultra the amount of his just debts. The affidavit of sufficiency is annexed to the recognizance, which must contain the name and usual place of residence of the sureties, so that they may be readily identified. The recognizance must be entered into, and affidavits of sufficiency sworn before the examiner of recognizances, (an officer appointed by the Speaker,<sup>a</sup>) or before a justice of the peace, and in the latter case they are certified by the justice and delivered to the examiner.

The petitioners may dispense with sureties by paying 1,000*l.* into the Bank of England on the account of the examiner, and taking a bank receipt, which is delivered to the examiner, who thereupon becomes trustee for the sum so paid in, for the same purposes for which the recognizance is required; but this payment does not absolve the petitioners from the necessity of also entering into a recognizance.

The recognizances having been duly entered into, the election petition must be left with the examiner, who certifies by an endorsement thereon, that the recognizance has been entered into, with the affidavits of sufficiency, or that money has been paid into the bank as a substitute for sureties, as the case may be. On or before the day

Under the stat. 7 & 8 Vict. c. 103, s. 5.

of presenting the petition, the names of the sureties, with their residences, are entered in a book kept at the examiner's office, and this entry, with the recognizances and affidavits, may be inspected by all parties interested. If the sureties are objected to for insufficiency or any other ground, the ground of objection must be stated in writing under the hand of the objecting party or his agent, and delivered to the examiner not later than at noon of the eleventh day after the presentation of the petition, if the surety reside in England, and not later than noon of the fifteenth day after the presentation of the petition, if the surety reside in Ireland or Scotland. Upon the receipt of such written objection, the examiner exhibits in his office a notice that he has received such a statement of objection, and fixes a day for hearing the same, which must not be less than three, or more than five, days after the statement of objection has been delivered to him. The examiner may examine witnesses upon oath, or receive affidavits, either to support or answer the objection taken to the sureties. He may adjourn the inquiry, if he think fit, and award costs to be paid by either party to the other; and in all cases his decision as to the sufficiency of the sureties is final. If a surety die, and his death is stated as a ground of objection, the petitioner will be allowed to pay into the Bank of England, to the examiner's account, the sum for which the deceased was bound, within three days after notice of the objection. When the examiner decides that the objection taken to a surety is valid, he reports the fact to the Speaker, who submits it to the house. If no objection is taken to the sureties, or the examiner considers the objections taken are not well founded, he reports in due time that the sureties are unobjectionable; and a list of the petitions in respect of which he has so reported is kept at his office for inspection. In concluding this part of the subject, it may be necessary to add, that the only persons entitled to object to sureties are, the sitting member who is petitioned against, or electors petitioning and admitted as parties to defend an election or return.

The time limited for presenting election petitions is not fixed by act of parliament, but depends upon the orders of the house, passed soon after the meeting of parliament. The usual order in reference to this matter is, "That all persons who will question any returns of members to serve in parliament for any county, city, borough,

or place in the United Kingdom, do question the same within fourteen days next, and so within fourteen days next after any new return shall be brought in." When a petition specifically alleges payment of money by a member, or with his privity, after the election, in furtherance of any contract to bribe or corrupt electors, the return of the member involved in such transaction, may be questioned within twenty-eight days after payment of the money; but in ordinary cases the prescribed period is fourteen days from the day on which the usual sessional orders are passed at the commencement of the session.

The sitting member whose return is impeached may give notice of his intention not to defend the return, and in that case he cannot afterwards appear as a party against the petition complaining of his return; nor can he sit in the house, or vote, after such notice, until the petition against him has been disposed of. It is competent, however, for any persons claiming to have had a right to vote at an election, within fourteen days after the presentation of an election petition, or within twenty-one days after notice in the Gazette, stating that the seat is vacant, or that the sitting member will not defend his election or return, to present a petition praying to be admitted as parties to defend the return, or to oppose the prayer of the election petition. The persons so petitioning may be parties with the sitting member, if he be a party opposing the petition, or in the room of the sitting member if he decline to appear and support his return.

The responsibility of the proceedings, preliminary to the presentation of an election petition, falling peculiarly upon the professional agents of the parties concerned, we have deemed it expedient to refer to them somewhat in detail. The constitution of the tribunal appointed to try the merits of an election petition, although a matter of considerable public interest, and one which the parties to an election petition usually consider of the first importance, is the result of a statutory arrangement of a complicated nature, in which the avowed object has been, to exclude the parties or their agents from having any voice, or exercising any direct influence. A brief analysis of the law under which election committees are appointed must therefore suffice.

On the day after the expiration of the time allowed for questioning the return of

members, the Speaker appoints a "General Committee of Elections," consisting of six members whose returns are not questioned. If this appointment be not questioned within three days, it is absolute. If any vacancy occur, it is supplied by the Speaker's warrant. The general committee being sworn to perform their duties without fear or favour, meet at a time and place appointed by the Speaker; but in order to transact business four members must be present and concur in the appointment of a select committee, as hereafter explained.

On the next meeting of the house after the notification of the appointment of the general committee, the clerk reads over the names of the members, and those who claim exemption upon the ground of age, as being more than 60 years old, or upon grounds of a temporary nature, are excused, and excluded from an alphabetical list made out by the clerk of the house. The list with these omissions is referred to "the general committee," who select in the first instance from 6 to 12 members, who form what is called "the Chairman's Panel." The chairman of every select committee is appointed from this panel. The remaining members in the alphabetical list are divided by "the general committee" into five panels, containing as nearly as may be an equal number of members. This division is reported to the house, and the clerk decides by lot the order of the panels, and distinguishes each by the number denoting the order in which it has been drawn. The panels so numbered are returned to "the general committee," and constitute the panels from which members are chosen to serve on select committees.

All election petitions, as well as the reports of the examiner concerning the sureties to such petitions, are referred to "the general committee," which directs the preparation of a list of election petitions in respect to which the recognizances are unobjectionable and the proceedings not suspended. The "general committee" choose committees to try election petitions in the order in which the petitions stand in the list, exercising a discretionary power as to the number of committees to be chosen in each week, having regard to the number of committees already sitting on election petitions, and to the number to be appointed. Notice of the time and place appointed for choosing every committee is published in the votes, not less

than fourteen days before the day appointed for the choice. All parties interested may attend "the general committee" at the day and hour so appointed.

Where the petition involves an objection to particular voters, there is another proceeding preliminary to the actual appointment of the select committee. Before six o'clock p. m. on the sixth day next before the day appointed for choosing the select committee, any party intending to object to particular voters must deliver to the clerk of the general committee, lists of the voters intended to be objected to, distinguishing the general heads of objection, and inserting the names of the voters to whom such objections are alleged to apply.

Four members, at least, of the general committee must concur in choosing the members of the select committee, which consists of one member from the chairman's panel, and four members from the panel in rotation. Each panel serves for a week, beginning with the panel first drawn by the clerk, and omitting from the account those weeks in which no select committee is to be chosen. Members are disqualified from serving on any select committee, who have voted at the election, or who are parties to, or related (by kindred or affinity in the first or second degree) to the sitting member, or the party on whose behalf the seat is claimed. When the four members of the select committee have been appointed by the general committee, such appointment is notified to the members of the chairman's panel, who choose from amongst themselves a chairman for the select committee so appointed, and communicate to the general committee the name of the member so chosen as chairman.

After the four members of the select committee are appointed by "the general committee," and the selection of the chairman by "the chairman's panel," has been communicated, the parties to the petition, as well as the sitting member and those admitted to defend the return, are called in, and the names of the members of the select committee and of the chairman are read over to them, and they are directed to withdraw, but at the expiration of half an hour are again called in, and may then object to the chairman, or to all or any of the four members chosen, as disqualified to sit and act on the select committee. The objections of the petitioners to the constitution of the committee is first heard, and then the objections of the sitting members,

or of electors admitted to defend the return. If the objection is allowed by four members, at least, of the general committee, the parties withdraw, and another committee is selected from the same panel, which may include any member not before objected to. If the chairman is objected to and the objection allowed, his name is sent back to the chairman's panel, who substitute another name from amongst their own body. If the members chosen to serve on the select committee are not objected to, or the objections taken to them are disallowed, they constitute the select committee, and receive notice from the clerk of the general committee that they have been so chosen. But any member receiving such notice may attend the general committee on the following day, and satisfy them that there are circumstances in his case affecting the impartial character of the committee which would render him ineligible to serve. If the objection thus suggested by a member as to himself is considered valid, the general committee proceed to appoint another committee, precisely in the same manner as if the objection had been taken by one of the parties to the petition. If the member's objection is not considered by "the general committee" of sufficient weight to render him ineligible to serve, the previous appointment stands.

At the meeting of the House next after the appointment of the select committee, the names of the members so appointed are reported to the house, and the petitions and lists of voters objected to are annexed to such report. The members so reported are then sworn by the clerk at the table, "well and truly to try the matter of the petitions referred to them, and a true judgment to give according to the evidence." If any member who has notice that he has been appointed to serve on a select committee does not attend in his place to be sworn, he is ordered to be taken into the custody of the Serjeant-at-Arms, and the swearing of the committee is adjourned to the next meeting of the house; and if on the day of adjournment all the members do not attend at the table to be sworn, or if sufficient cause be shown for the absence of any member, the committee is discharged and a new committee appointed by "the general committee," in the manner already described.

The practice and proceedings of the select committee, and the power with which this body is intrusted, are of sufficient interest and importance to entitle them to be considered in a separate paper.

## HISTORICAL SKETCHES OF THE PROFESSION.

### NO. 1. ATTORNEYS AND SOLICITORS.

It is manifest that coeval almost with the earliest establishment of courts of justice, there necessarily existed a body of officers engaged in the practical management of the business of the court, preparing cases for its adjudication, stating them before the court, and assisting the parties in the discussion of the matters in issue. In the first instance, when the subjects of litigation were few and simple, the judge heard the parties personally, and investigated the matters in question without much regard either to forms or modes of proceeding. There were no written pleadings. The complainant stated his grievance, and the defendant was summoned to attend; witnesses were heard, and the case was summarily decided; restitution, payment, or satisfaction was ordered; imprisonment followed disobedience, and thus the controversy ended.

This primitive mode of hearing and determining the claims of suitors was naturally succeeded by more formal proceedings;—still, however, conducted orally. It may be inferred that even at this early stage of litigation the parties, though required to appear in person, were not without some professional advice. The most ancient officers, of whom we have any authentic account, appear to be those who assisted the judge in the capacity of clerks. They were acquainted with whatever might be dignified with the title of "the practice of the court," and the suitors, doubtless, resorted to them for information and assistance in bringing their grievances in a proper shape before the judge.

When written proceedings were introduced, these officers prepared the process of the court and entered the proceedings on record. There can be little question that they not only performed certain functions as officers of court, but also acted in the capacity known till recently in all our courts as "side clerks." Skilled in the proper mode of conducting the proceedings, these officers were employed by the suitors to prepare their writs and pleadings,

<sup>b</sup> 7 & 8 Vict. c. 103, s. 66, and Wordsworth's Election Law.

and the other forms by which it became necessary to approach the court.

It seems evident that as these clerks of the court were stationed in their several offices, and transacted the technical business from term to term, preparatory to the hearing or trial of a suit or action, the time arrived when the suitors required professional aid "out of court." Evidence was to be collected from a distance, which it was not within the province of the clerk in court to procure. Hence it may be presumed arose an order of practitioners denominated in the old books of practice and procedure "attorneys at large." For a long time, although the suitors might thus be professionally aided in civil, as they were in criminal, proceedings, they were obliged to appear in person before the court. At length, however, the legislature authorised the suitors to appear by their attorneys. This was obviously essential to the attainment of justice, for it rarely happened that the litigant parties were equally competent to conduct their respective cases,—either in preparing for the day of trial, or for the difficulties which accompanied the discussion before the court.

In the usual progress of society the general practitioner makes his appearance before the professed advocate; or rather, by whatever name he is distinguished, the same person performs the duties both of attorney and pleader. As in the early establishment of our colonies, so probably in the parent country, the limited extent of forensic business did not demand, and was not supplied with, two distinct classes of lawyers. It is not till subjects of controversy increase, till rights are defined, till trade and commerce is enlarged, till many contracts are made and broken, and property passes frequently from hand to hand, that the division of professional labour takes place.

It is well ascertained that Queen's Counsel are comparatively of modern origin, Lord Bacon having been the first of that rank. At what precise time the Serjeants-at-Law were constituted, and when they first regularly attended the courts, seems to be very doubtful. The degree of the Coif, no doubt, existed whilst the pleadings were *ore tenus*, and prior to any records of the court or any "reports of cases adjudged." In the arguments on the late celebrated *Serjeants' Case*, Sir William Follett says, that the oldest book, in which reference is made to the serjeants, appears to be the *Mirror of Justices*.<sup>b</sup> The

date of this book is uncertain. Chapter 2, section 5, treats of countors or pleaders. That word "countors" is defined in the 10th book as being derived from the mode in which serjeants practised, because the count or declaration comprehended the substance of the original writ and the very foundation of the suit.<sup>c</sup> "There are many," (says the *Mirror of Justices*,) "who know not how to defend their causes in judgment, and there are many who do; and therefore pleaders are necessary, so that that which the plaintiffs or actors cannot, or know not how to do by themselves, they may do by their serjeants, attorneys, or friends. Countors are serjeants skilful in the laws of the realm, who serve the common people to declare and defend actions in judgment for those who have need of them for their fees."

It is worthy of remark, also, that the early enactments and decisions against malpractice relate as well to serjeants as attorneys. Thus the 3 Edw. 1, stat 1, Westm. c. 29, provides, "that if any *serjeant countor*, or any other, [which has been held to include attorneys and clerks in court,<sup>d</sup>] do any manner of deceit in the King's court, or consent unto it in deceit of the court, or beguile the court or the party, and thereof be attainted, he shall be imprisoned for a year and a day, and thenceforth shall not be heard to plead."

In whatever order of precedence, as to time, we arrange the respective branches of the profession, there is no doubt that the due administration of justice has ever been deemed of primary importance by the people of this country, who are remarkable for their warm attachment to the trial by jury, and their other early institutions, whereby the just decision of legal questions is promoted and secured. We need not, therefore, be surprised to find that the regulation of the officers and practitioners of our courts of justice should, from very early times, have been an important object in the contemplation of the legislature.

We shall devote the remainder of the present paper to the statement and consideration of the various statutes and rules of court relating to the profession, in which it may be observed that the end to be attained was evidently the public good, by securing the due qualification and competency of attorneys appointed by the suitors and authorised to practice in the superior courts.

<sup>b</sup> Manning's *Serjeants' case*, 30, 31.

<sup>c</sup> See Preface to 10 Co. Rep.

<sup>d</sup> 2 Inst. 224.



## THE STATUTES.

1235. *Appointment of attorneys.*—The statute in which attorneys are first mentioned, was passed in the year 1235, namely, the statute of Merton, 20 Hen. 3, c. 10. It seems that prior to this time, suitors in civil suits, like those in criminal, were obliged to attend in person. By that act it was provided, "that every freeman which oweth suit to the county, tithing, hundred and wapentake, or to the court of his lord, might freely make his attorney to do those suits for him there." It may be reasonably inferred, that there must have been a class of persons at this time in attendance upon the courts in the character of attorneys, ready to assist the suitors in the proceedings before the court, but unable to act without the presence of their clients. It was evidently therefore a great boon to the suitors, to relieve them from personal attendance, and to authorize them to appoint a fit and proper person to appear for them.

There were several other statutes passed, authorizing suitors to appoint attorneys, viz., the statute of Westminster in 1275, 3 Edw. 1, c. 42; the statute of Gloucester in 1278, 6 Edw. 1, c. 8; the 2nd stat. of Westminster in 1285, 13 Edw. 1, c. 10; the stat. of York in 1318, 12 Edw. 2, c. 1; the stat. of Westminster in 1383, 7 Rich. 2, c. 14, and in 1405, that of 7 Hen. 4, c. 13. So far as to the power of *appointing* attorneys. Next came the enactments relating to their *admission*.

1322. *Admitting attorneys.*—In 1322, the stat. of Carlisle, 13 Edw. 2, c. 1, was passed, directing who should in future admit attorneys. It appears by this act, that the Chancellor of England and Chief Justices had authority, according to their discretion to admit attorneys, and the act provided, that the Barons of the Exchequer or the justices of the other courts should only admit attorneys in pleas where they were assigned, whilst the clerks and servants of the barons and justices were prohibited from admitting attorneys.

1403. *Examining attorneys.*—Having thus authorised the appointment and admission of attorneys, the next important act was that of the 4 Henry 4, c. 18, made in 1403, whereby it was directed "that attorneys should be *examined* as to their virtue and learning, and if found in default, punished." Thus, "for sundry damages and mischiefs which had ensued before that time to divers persons of the realm by a great number of attorneys ignorant, and

not learned in the law, as they were wont to be before that time, it was ordered and established that all the attorneys should be examined by the justices, and by their discretions, their name put on the roll; and they that were good and virtuous and of good fame should be received and sworn well and truly to serve in their offices, and especially that they made no suit in a foreign county; and the other attorneys should be put out by the discretion of the justices; and that their masters for whom they were attorneys be warned to take others in their places, so that in the meantime no damage nor prejudice should come to their masters. And if any of the attorneys died or ceased, the justices for the time being by their discretion should make another in his place, which was a virtuous man, and learned, and sworn in the same manner as aforesaid; and if any such attorney should be thereafter notoriously found in any default of record or otherwise, he should forswear the court and never after be received to make any suit in any court of the King."

*Restrictions on attorneys.*—Next came the enactments restricting particular persons from acting as attorneys, viz., in 1403: the 4 Henry 4, c. 19, ordained that no bailiff, steward, nor minister of lords or franchises which had return of writs, should be attorney in any plea within his bailiwick, and, in 1413, it was directed that undersheriffs and sheriff's officers should not be attorneys. This restriction has been repealed by the 6 & 7 Vict. c. 73.

In 1455, 33 Henry 6, c. 7, the number of attorneys in Norfolk was limited to 6, in Suffolk to 6, and Norwich to 2, and they were to be elected and admitted by the two chief justices.

From this period an interval of a century and a half elapsed before the attorneys became the subject of further legislative regulation. Many rules and orders of the superior courts were however made which will be hereafter adverted to.

1606. *Fees and charges.*—The next statute in order of date was that of the 3rd James 1, c. 7 which was passed in 1606, and provided for the delivery of a bill of the fees and charges of attorneys, and directed that none should be admitted except those brought up in the courts or otherwise well practised and of skilful and honest disposition, and they were restrained from allowing other persons to practise in their names.

1729. After the act of James 1st, ano-

ther pause of more than a century occurred in professional legislation, extending to the year 1729, when the general act of 2 George 2, c. 23, was passed, comprising numerous regulations, and providing that the judges, before they admitted persons as attorneys, should examine and inquire, by such ways and means as they thought proper, touching their fitness and capacity.

*Taxation of bills of costs.*—The statute of James, and particularly that of George the 2nd, provided means for regulating and controlling the fees and disbursements of attorneys and solicitors, subjecting them to a summary taxation by an officer of the court, and restraining the recovery of their charges until so investigated. By these and subsequent statutes various regulations were made to secure the qualifications of attorneys by service under articles of clerkship, and finally by the 6 and 7 Vict. c. 73, recognizing expressly the necessity of an examination. Whilst by this statute some acts of justice were done to the attorneys by increased restrictions on the encroachments of unqualified persons, very extensive powers were willingly conceded by the profession for the taxation of all costs, whether relating to business in court or not, or whether payable by the client himself or a third party, and whether due to the attorney or his executors, and such taxation is allowed notwithstanding the payment of the bill, if the special circumstances require it, provided the application be made within 12 months.

#### THE RULES OF COURT.

Such is the general scope of the statutes, so far as they can bear on the interests of the public and the status of the practitioners. We now proceed to advert to the rules of the superior courts relating to the practice of attorneys, their personal attendance, in court and the means by which their due qualifications were sought to be enforced. The earliest rule of court relating to attorneys is that of the Common Pleas in Trinity term, 1457, 35 Hen. 6, by which it was ordered, "That none attorney ne none other make any manner of writ or process in any officer's name of the same place, saving only every officer in his own name," &c.

In Michaelmas term, 1564, the attorneys of the Common Pleas were ordered not to practise in any other court except in causes touching themselves. This it is highly probable was deemed requisite to

insure the personal attendance of the attorney in his own court.

And by a rule of Michaelmas term, 1573, every attorney was required to give his attendance at the court on certain days in Term time. The rule for enforcing this personal attendance was repeated in Trinity Term, 1582, and again in Easter Term, 1614.

In 1616, a rule was made to limit the attorneys in each court to a competent number, and to remove the superfluous, wherein respect was to be had that the most unfit and unskilful persons be removed.

By a rule of Hilary Term, 1632, the following regulation was made regarding the service of a clerkship to an attorney before admission. "None hereafter shall be admitted to be an attorney of this court by the space of six years at the least, or such as for their education and study in the law shall be approved of by the justices of this court to be of good sufficiency."

In 1645, it was ordered by a rule of court, "That none should be admitted an attorney unless he had practised five years as a common solicitor in court, or had served five years as a clerk to some judge, serjeant-at-law, practising counsel, attorney, clerk, or officer of one of the courts at Westminster, and should on examination be found of good ability and honesty for such employments, and that the court should once in every year, in Michaelmas Term, nominate 12 or more able and credible practicers—to continue for the ensuing year to examine such persons as should desire to be admitted attorneys, and appoint convenient times and places for the examination; and the persons desirous of being admitted were first to attend with their proofs of service, then repair to the persons appointed to examine, and being approved, to be presented to the court and sworn."

*Members of Inns of Court or Chancery.*—Anciently all attorneys were required to be members of one of the Inns of Court or Chancery, and to be in commons every term. This regulation was enforced by rules of the superior courts in 1632, and again in Michaelmas Term, 1654; Trinity Term 1677, and Michaelmas Term, 1684. The last of these rules was made in Michaelmas Term, 1704, in the reign of Queen Anne, of which the following is the substance:—

"That all attorneys and clerks of the courts not already admitted into one of the

Inns of Court or Chancery, shall procure themselves to be admitted into one of the Inns of Court, (if those honourable solicitors shall please to admit them,) or into one of the Inns of Chancery, and take chambers there, (if conveniently they may be held).

"That for the future no person whatsoever shall be sworn an attorney, or admitted, or entered a clerk of any of the courts or offices, unless first admitted of one of the Inns aforesaid, and bring and produce, at the time of his being sworn an attorney, or admitted or entered a clerk as aforesaid, a certificate under the hand of the treasurer or principal of the Inn whereof he is admitted, testifying such his admission."

The same rule then recites, "That by the usage, custom, or orders of the Inns of Chancery, the members thereof were obliged to, and did, come into commons, and continue therein according to the orders of such society, to their great ease in transacting their causes one with another, and much benefit to their clients, but of late most, or a great number, of the attorneys and clerks, had neglected to come into commons, or continue therein, according to the respective orders of the said Inns of Chancery, to the great decay and detriment of those societies. It was therefore ordered that the attorneys and clerks which then were and should be admitted into any of the Inns of Chancery should come into and continue in commons, according to the orders of such society. And in case any attorney or clerk should offend against this rule or any part thereof, such attorney shall be put out of the Roll of Attorneys, and such clerk so offending should be discharged and displaced from such office."

The rule also directed, "That the respective treasurers and principals of the Inns of Chancery, and the antients, rulers, and governors of the same, should from time to time procure a list of the names of the attorneys and clerks who were not admitted of any of the Inns of Court or Chancery, and yearly deliver such list unto The Right Honourable the Lord Chief Justice, to the intent that the offenders might be compelled to give obedience to the same."

It will thus be seen that the attorneys were *required* by a long series of rules of the courts at Westminster, to belong either

to the Inns of Court or the Inns of Chancery. They might elect either the one or the other class; and they were required to go into commons "for the greater ease in transacting causes, and for the benefit of their clients."

#### METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

THE Second Address of the Committee of Management has been sent to every attorney and solicitor not already enrolled amongst the members of the association. It has also been transmitted to the members, in order that they may promote the various objects in view. Not only the committee, but many of the influential members of the general body, have availed themselves of the present opportunity of calling the attention of Members of Parliament to the grievances of which the profession complains. The way is thus prepared for a favourable consideration of many of the important topics comprised in the Address of the association. The establishment of the society has been well-timed, and we augur favourably of its progress.

The attorneys, indeed, are generally absorbed in the business of their clients and rarely attend to their own interests. They endure much importunity before they are aroused to action. We have often in these pages adverted to the progress of professional societies. They have never numbered more than two or three hundred even in London. The Incorporated Society is the only instance until now of a numerous association.

It appears, however, that nearly 300 of the metropolitan solicitors have joined the association, and about double that number of the provincial. Considering the usual supineness of the body, this is a large congregation; doubtless it will be increased by next term, and before the meeting of parliament the number will be all that the promoters of the association can reasonably expect.

#### NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

##### JUVENILE OFFENDERS.

10 & 11 VICT. c. 82.<sup>a</sup>

An Act for for the more speedy Trial, and Punishment of Juvenile Offenders. [22nd July, 1847.]

1. *Persons not exceeding 14 years of age committing certain offences may be summarily convicted by two justices. Justices may dismiss*

*This act comes into immediate operation.*

<sup>a</sup> For further details, see Maugham's *Treatise on the Law of Attorneys*, 1825, 1839 and 1843.

*the accused if they deem it expedient not to inflict any punishment*—Whereas, in order in certain cases to ensure the more speedy trial of juvenile offenders, and to avoid the evils of their long imprisonment previously to trial, it is expedient to allow of such offenders being proceeded against in a more summary manner than is now by law provided, and to give further power to bail them: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That every person who shall, subsequently to the passing of this act, be charged with having committed or having attempted to commit, or with having been an aider, abettor, counsellor, or procurer in the commission of any offence which now is or hereafter shall or may be by law deemed or declared to be simple larceny, or punishable as simple larceny, and whose age at the period of the commission or attempted commission of such offence shall not, in the opinion of the justices before whom he or she shall be brought or appear as herein-after mentioned, exceed the age of 14 years, shall, upon conviction thereof, upon his own confession or upon proof, before any two or more justices of the peace for any county, riding, division, borough, liberty, or place in petty sessions assembled, at the usual place, and in open court, be committed to the common gaol or house of correction within the jurisdiction of such justices, there to be imprisoned, with or without hard labour, for any term not exceeding three calendar months, or, in the discretion of such justices, shall forfeit and pay such sum, not exceeding 3*l.*, as the said justices shall adjudge, or, if a male, shall be once privately whipped, either instead of or in addition to such imprisonment, or imprisonment with hard labour; and the said justices shall from time to time appoint some fit and proper person, being a constable, to inflict the said punishment of whipping when so ordered to be inflicted out of prison: Provided always, that if such justices upon the hearing of any such case shall deem the offence not to be proved, or that it is not expedient to inflict any punishment, they shall dismiss the party charged, on finding surety or sureties for his future good behaviour, or without such sureties, and then make out and deliver to the party charged a certificate under the hands of such justices stating the fact of such dismissal, and such certificate shall and may be in the form or to the effect set forth in the schedule hereunto annexed in that behalf: Provided also, that if such justices shall be of opinion, before the person charged shall have made his or her defence, that the charge is from any circumstance a fit subject for prosecution by indictment, or if the person charged shall, upon being called upon to answer the charge, object to the case being summarily disposed of under the provisions of this act, such justices shall, instead of summarily adjudicating thereupon, deal with the case in all respects as if this act had not been passed.

2. *Power to justices to hear and determine. One magistrate may, in certain cases, perform acts usually done by two.*—That any two or more justices of the peace for any county, riding, division, borough, liberty, or place in petty sessions assembled, and in open court, before whom any such person as aforesaid charged with any offence made punishable under this act shall be brought or appear, are hereby authorised to hear and determine the case under the provisions of this act: Provided always, that any magistrate of the police courts of the metropolis sitting at any such police court, and any stipendiary magistrate sitting in open court, having by law the power to do acts usually required to be done by two or more justices of the peace, shall and may within their respective jurisdictions hear and determine every charge under this act, and exercise all the powers herein contained, in like manner and as fully and effectually as two or more justices of the peace in petty sessions assembled as aforesaid can or may do by virtue of the provisions in this act contained.

3. *Proceedings under this act a bar to further proceedings.*—That every person who shall have obtained such certificate of dismissal as aforesaid, and every person who shall have been convicted under the authority of this act, shall be released from all further or other proceedings for the same cause.

4. *Mode of compelling the appearance of persons punishable on summary conviction.*—And for the more effectual prosecution of offences punishable upon summary conviction by virtue of this act, be it enacted, That where any person whose age is alleged not to exceed 14 years shall be charged with any such offence on the oath of a credible witness before any justice of the peace, such justice may issue his summons or warrant to summon or to apprehend the person so charged to appear before any two justices of the peace in petty sessions assembled as aforesaid at a time and place to be named in such summons or warrant.

5. *Power to one justice to remand and take bail.*—That any justice or justices of the peace, if he or they shall think fit, may remand for further examination or for trial, or suffer to go at large upon his or her finding sufficient surety or sureties, any such person as aforesaid charged before him or them with any such offence as aforesaid; and every such surety shall be bound by recognizance to be conditioned for the appearance of such person before the same or some other justice or justices of the peace for further examination, or for trial before two or more justices of the peace in petty sessions assembled as aforesaid, or for trial at some superior court, as the case may be; and every such recognizance may be enlarged from time to time by any such justice or justices to such further time as he or they shall appoint; and every such recognizance which shall not be enlarged shall be discharged without fee or reward, when the party shall have appeared according to the condition thereof.

6. *Application of fines.*—That every fine im-

posed by any justice under the authority of this act shall be paid to the clerk to the convicting justices, and shall be by him paid over to the use of the general county rate, or rate in the nature of a general county rate, for the county, riding, division, borough, liberty, franchise, city, town, or place in which the offence in respect of which such fine shall be imposed may have been committed.

7. *As to the summoning and attendance of witnesses.*—That it shall be lawful for any justice of the peace by summons to require the attendance of any person as a witness upon the hearing of any case before two justices, under the authority of this act, at a time and place to be named in such summons; and such justice may require and bind by recognizance all persons whom he may consider necessary to be examined touching the matter of such charge to attend at the time and place to be appointed by him, and then and there to give evidence upon the hearing of such charge; and in case any person so summoned or required or bound as aforesaid shall neglect or refuse to attend in pursuance of such summons or recognizance, then upon proof being first given of such person's having been duly summoned as herein-after mentioned, or bound by recognizance as aforesaid, it shall be lawful for the justices before whom any such person ought to have attended to issue their warrant to compel his appearance as a witness.

8. *Service of summons.*—That every summons issued under the authority of this act may be served by delivering a copy of the summons to the party, or by delivering a copy of the summons to some inmate at such party's usual place of abode, and every person so required, by any writing under the hand or hands of any justice or justices, to attend and give evidence as aforesaid, shall be deemed to have been duly summoned.

9. *Form of conviction.*—That the justices before whom any person shall be summarily convicted of any such offence as herein-before mentioned may cause the conviction to be drawn up in the form of words set forth in the Schedule to this act annexed, or in any other form of words to the same effect, which conviction shall be good and effectual to all intents and purposes.

10. *No certiorari, &c.*—That no such conviction shall be quashed for want of form, or be removed by certiorari or otherwise into any of her Majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

11. *Convictions to be returned to the quarter sessions.*—That the justices of the peace before whom any person shall be convicted under the provisions of this act shall forthwith thereafter transmit the conviction and recognizances to the clerk of the peace for the county, borough, liberty, or place wherein the offence shall have been committed, there to be kept by the proper

officer among the records of the court of general quarter sessions of the peace; and the said clerk of the peace shall transmit to one of her Majesty's principal secretaries of state a monthly return of the names, offences, and punishments mentioned in the convictions, with such other particulars as may from time to time be required.

12. *No forfeiture upon convictions under act, but presiding justices may order restitution of property.*—That no conviction under the authority of this act shall be attended with any forfeiture, but whenever any person shall be deemed guilty under the provisions of this act it shall be lawful for the presiding justices to order restitution of the property in respect of which such offence shall have been committed to the owner thereof or his representatives, and if such property shall not then be forthcoming, the same justices, whether they award punishment or dismiss the complaint, may inquire into and ascertain the value thereof in money, and if they think proper order payment of such sum of money to the true owner, by the person or persons convicted, either at one time or by instalments at such periods as the court may deem reasonable, and the party or parties so ordered to pay shall be liable to be sued for the same as a debt in any court in which debts may be by law recovered, with costs of suit, according to the practice of such court.

13. *Recovery of penalties.*—That whenever any justices of the peace shall adjudge any offender to forfeit and pay a pecuniary penalty under the authority of this act, and such penalty shall not be forthwith paid, it shall be lawful for such justices, if they shall deem it expedient, to appoint some future day for the payment of such penalty, and to order the offender to be detained in safe custody until the day so to be appointed, unless such offender shall give security to the satisfaction of such justices for his or her appearance on such day; and such justices are hereby empowered to take such security by way of recognizance or otherwise, at their discretion; and if at the time so appointed such penalty shall not be paid, it shall be lawful for the same or any other justices of the peace by warrant under their hands and seals, to commit the offender to the common gaol or house of correction within their jurisdiction, there to remain for any time not exceeding three calendar months, reckoned from the day of such adjudication, such imprisonment to cease on payment of the said penalty.

14. *Expenses of prosecutions, how to be paid.*

That the justices in petty sessions assembled as aforesaid, before whom any person shall be prosecuted or tried for any offence cognizable under this act, are hereby authorised and empowered, at their discretion, at the request of the prosecutor or of any other person who shall appear on recognizance or summons to prosecute or give evidence against any person accused of any such offence, to order payment to the prosecutor and witnesses for the prosecution of such sums of money as to the justices

shall seem reasonable and sufficient to reimburse such prosecutor and witnesses for the expenses they shall have severally incurred in attending before the examining magistrate, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein, and to order payment to the constables and other peace officers for the apprehension and detention of any person or persons so charged; and although no conviction shall actually take place, it shall be lawful for the said justices to order all or any of the payments aforesaid when they shall be of opinion that the parties or any of them have acted *bona fide*; and the amount of expenses of attending before the examining magistrate, and the compensation for trouble and loss of time therein, and the allowances to the constables and other peace officers for the apprehension and detention of the offender, and the allowances to be paid to the prosecutor, witnesses, and constables for attending at the said petty sessions, shall be ascertained by and certified under the hands of the justices in such petty session assembled as aforesaid: Provided always, that the amount of the costs, charges, and expenses attending any such prosecution, to be allowed and paid as aforesaid, shall not in any one case exceed the sum of 40s.: Provided also, that no expenses shall be allowed to prosecutors, witnesses, and constables exceeding the sums allowed, according to a scale of fees and allowances authorised and settled by the justices of the peace at quarter sessions assembled, according to the statute in such case made and provided with respect to preliminary inquiries before justices of the peace in cases of felony.

15. *Orders for payment how to be made.*—That every such order of payment to any prosecutor or other person, after the amount thereof shall have been certified by the justices as aforesaid, shall be forthwith made out and delivered by the clerk of the said petty session unto such prosecutor or other person, upon such clerk being paid for the same the sum of sixpence for every such person, and no more, and, except in cases hereinafter provided for, shall be made upon the treasurer of the county, riding, or division in which the offence shall have been committed, or shall be supposed to have been committed, who is hereby authorised and required, upon sight of every such order, forthwith to pay to the person named therein, or to any other person duly authorised to receive the same on his or her behalf, the money in such order mentioned, and shall be allowed the same in his accounts: Provided always, that no such order shall be valid, nor shall such treasurer pay any money thereon, unless it shall have been framed and presented in such form and under such regulations as the justices of the peace in quarter sessions assembled shall from time to time direct.

16. *Payment of costs and expenses with respect to boroughs, &c.*—And whereas offences cognizable under this act may be committed in liberties, franchises, cities, towns, and places

which do not contribute to the payment of any county rate, some of which raise a rate in the nature of a county rate, and others have neither any such rate nor any fund applicable to similar purposes, and it is just that such liberties, franchises, cities, towns, and places should be charged with all costs, expenses, and compensations ordered by virtue of this act in respect of such offences as aforesaid committed or supposed to have been committed therein respectively; be it therefore enacted, That all sums directed to be paid by virtue of this act in respect of such offences as aforesaid committed or supposed to have been committed in such liberties, franchises, cities, towns, and places shall be paid out of the rate in the nature of a county rate, or out of any fund applicable to similar purposes, where there is such a rate or fund, by the treasurer or other officer having the collection or disbursement of such rate or fund, and where there is no such rate or fund in such liberties, franchises, cities, towns, or places, shall be paid out of the rate or fund for the relief of the poor of the parish or township, district or precinct therein, where the offence was committed or supposed to have been committed, by the overseers or other officers having the collection or disbursement of such last mentioned rate or fund; and the order of court shall in every such case be directed to such treasurer, overseers, or other officers respectively, instead of the treasurer of the county, riding, or division, as the case may require.

17. *Proceedings against persons acting under this act.*—And for the protection of persons acting in the execution of this act, be it enacted, That all actions and prosecutions to be commenced against any person for anything done in pursuance of this act shall be laid and tried in the county where the fact was committed, and shall be commenced within three calendar months after the fact committed, and not otherwise; and notice in writing of such action or prosecution, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action or prosecution; and in any such action or prosecution the defendant may plead the general issue, and give this act and the special matter in evidence, at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action or prosecution after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff in such action, the plaintiff shall not have costs against the defendant, unless the judge before whom

the trial shall be shall certify his approbation of the action and of the verdict obtained thereupon.

18. *Extent of act.*—That nothing in this act contained shall extend to Scotland or Ireland.

#### SCHEDULE OF FORMS TO WHICH THIS ACT REFERS.

##### *Form of Certificate of Dismissal.*

WE of her Majesty's justices of the peace for the county of [or I, a magistrate of the police court of as the case may be,] do hereby certify, That on the day of in the year of our Lord at in the said county of M. N. was brought before us the said justices [or me the said magistrate] charged with the following offence, (that is to say,) [here state briefly the particulars of the charge,] and that we the said justices [or I the said magistrate] thereupon dismissed the said charge. Given under our hands [or my hand] this day of

##### *Form of Conviction.*

BE it remembered, That on the day of in the year of our Lord one thousand eight hundred and at in the county of [or riding, division, liberty, city, &c., as the case may be,] A. O. is convicted before us, J. P. and Q. R., two of her Majesty's justices of the peace for the said county [or riding, &c.,] [or me, S. T., a magistrate of the police court of as the case may be,] for that he the said A. O. did [specify the offence, and the time and place when and where the same was committed, as the case may be, but without setting forth the evidence,] and we the said J. P. and Q. R. [or I the said S. T.] adjudge the said A. O. for his said offence to be imprisoned in the [or to be imprisoned in the and there kept to hard labour for the space of [or we [or I] adjudge the said A. O. for his said offence to forfeit and pay [here state the penalty actually imposed,] and in default of immediate payment of the said sum, to be imprisoned in the [or to be imprisoned in the and there kept to hard labour] for the space of unless the said sum shall be sooner paid. Given under our hands and seals [or my hand and seal] the day and year first above mentioned.

#### NOTICES OF NEW BOOKS.

*A Treatise on the Law of Leases, with Forms and Precedents.* By THOMAS PLATT, Esq., of Lincoln's Inn, Barrister-at-Law, Author of "A Practical Treatise on the Law of Covenants." In 2 vols. London: A. Maxwell & Son, 1847. Pp. 1695.

There are two remarkable points which

may be noticed in regard to the subject of these volumes. 1st. There is no form of deed throughout the wide range of Conveyancing practice so frequently used by the practitioner as a Lease. 2nd. There is no other deed so frequently drawn by the solicitor on his sole responsibility, nor any which is so rarely submitted to the revision of counsel.

It is certain, however, that the law relating to leases is not only of the greatest practical importance, but that it involves many very nice and difficult questions. Seeing the utility of a treatise on a subject so universal, it is not a little singular that the field should have remained to the present time almost unoccupied. The importance of the subject has evidently been underrated. Inasmuch as comparatively few questions and few drafts of leases are submitted to counsel, it has been inferred, probably, that the matter was comparatively insignificant. There is, indeed, an old book by Bacon on Leases and Terms for Years, with Precedents, published in 1798; one by Bailey in 1807; and an Inquiry into the Nature of Leases, by Clark, in 1818. The law is also concisely treated of in various digests and abridgments. But it remained for Mr. Platt to present the profession with a full and complete treatise of the whole law and practice relating to leases, accompanied by an ample collection of precedents, and we are glad that the work has fallen into such competent hands, equally in regard to practical experience and professional learning.

In the 1st Part, the author gives the definition, and sets forth the nature of a lease.

The 2nd Part treats of the subjects of demise; and the 3rd of the contracting parties; and of their contract or agreement under the following heads:—

1. Who may be lessors.
2. Who may be lessees.
3. Of leases between particular individuals.
4. Of the contract or agreement.

The 4th Part relates to the term of the lease.

1. As to leases at will.
2. As to leases for any aliquot part of a year; for a year; or from year to year.
3. As to leases for an absolute term of years.
4. As to leases for a term of years determinable with a life or lives, or on any other event.
5. As to leases for a term, with the grant of an accessional term on an event.
6. As to leases for life or lives.
7. As to renewable leases.



Part the 5th comprises the instrument of demise, its essential and formal parts.

1. Of leases by writing, parol, and deed.
2. Of the date.
3. Of the parties.
4. Of the recitals.
5. Of the testatum.
6. Of the parcels, and clauses of reversion and estate.
7. Of the exceptions and reservations.
8. Of the habendum.
9. Of the reddendum.
10. Of the covenants.
11. Of the proviso for re-entry on non-payment of rent or non-performance of covenant.
12. Of the counterpart and duplicate of the lease.

The 6th Part treats of the duration of the liability of the covenanting parties; and of the effect of the transmission by act of law, or alienation by act of the party, of the reversion or the lease.

1. Of the relative rights and liabilities of lessor and lessee.

2. Of the effect produced on the tenancy by the death of the lessor.

3. Of the effect produced on the tenancy by the death of the lessee.

4. Of the effect produced on the tenancy by the lessor's assignment during life of his reversion: considered with reference as well to the rights as the liabilities of the assignee.

5. Of the effect produced on the tenancy by the lessee's assignment during life of his term: considered with reference as well to the rights as the liabilities of the assignee: and of the principles on which covenants run with the land.

6. Of the effect produced on the tenancy by the bankruptcy of the lessee.

7. Of the effect produced on the tenancy by the acts passed for the relief of insolvent debtors.

8. Of the effect produced on the tenancy by the lessee's assigning his property to trustees for the benefit of his creditors.

Part the 7th concerns the determination of the lease and its consequences.

1. On the determination of the lease before its regular expiration by effluxion of time.

2. Of the determination of the lease by effluxion of time, and of the effect of holding over.

The 8th Part relates to the preparation, custody, production, stamping and registration of leases and of indorsements.

1. Of the preparation of the lease and counterpart.

2. Of the custody and production of the lease and counterpart.

3. Of the stamping of the lease and counterpart, and also of agreements for leases.

4. Of the registration of leases.

5. Of indorsements of leases.

Mr. Platt has evidently entered on his task with great zeal. He has collected his materials with unwearied diligence and research, arranged them in excellent order, and discussed every important point with much learning and discrimination. We could have wished, if possible, that the work had been somewhat less bulky and elaborate, and yet we know not what part could have been abridged without injury to the completeness of the treatise.

Standard works, like that before us, are of course mainly founded on statutes and decisions. Following the language of the legislature and the court, they become safe guides for the profession. It is dangerous to depart from the *ipsissima verba* of the act or judgment, and a legal writer has rarely an opportunity of displaying any literary attainments, excepting in his preface or introduction. Sad work is often made in an attempt to usher in a very useful and learned work by a highly wrought address. Mr. Platt has, we think, succeeded in this somewhat difficult effort, and expounded the design and object of his work in an able and unassuming manner. He says,—

"If the value of a work depended on the interest of the subject selected, the one now submitted to the profession might fearlessly compete for favour with its many distinguished predecessors; for few there are who pass through life unaffected by the discussions contained in it, either directly as principals, or indirectly in a representative character. But I am aware (he adds) that neither the importance of a theme nor its practical utility can supply the defects of imperfect analysis or inadequate illustration. With this principle in view at the commencement and during the progress of my task, I earnestly applied myself to the branch of law investigated in these pages. To perform my duty, I have exerted my best powers, neither shrinking from labour, nor yielding to anxiety or fatigue. The result in print, however, assures me that I proposed to myself a standard beyond my reach; and I am painfully sensible of the difference between design and execution. From these remarks, it will appear, that whatever errors may be discovered in my work are traceable to want of judgment, and not to indolence. In extenuation, I can only say, that, in possession of more learning than has fallen to my lot, I should have produced a better book. At the same time, I trust that my endeavours will not be wholly futile: that they may at least put the reader in the way of obtaining further information from the reports and statutes referred to, the only legitimate basis of a treatise of this nature."

The author in anticipation of an objection states, that he has thought it more

advisable in a few instances to examine under one head the several subordinate and collateral bearings of his subject, than to distribute them under separate divisions of the work.

"This," he says, "will be particularly observable in the Chapter on the *Reddendum*, where not only the considerations peculiarly appropriate to that division, but the ramifications incident to it, such as the suspension and apportionment of rent, the effect of the statutes of limitation on the lessee's liability to pay rent, and the relief afforded in equity, have also been discussed. A similar course has been pursued in the Chapter on *Renewals*. The convenience of the plan compensates for a departure from a more logical arrangement."

The general rule for the construction of a lease, and the law relating to its alteration by erasure, cancellation, and the like, as well as to its being duly executed, being common to all deeds, have not been specially noticed, as they offer nothing particularly applicable to, or illustrative of, the doctrine under consideration.

Mr. Platt observes, that the difficulty of procuring good *precedents* of leases is greater than can be conceived. They are often prepared by persons not very conversant with conveyancing, and are proportionably loose and unsatisfactory.

Those contained in the appendix to this work have been selected from a large number, as best calculated, from their various objects, to prove of practical service. In preparing the detached forms, Mr. Platt has aimed at a middle course, and, while divesting them of much of the abundant phraseology by which they have hitherto been characterised, has endeavoured to preserve the technical style and *cantilena* so desirable in all formal instruments. A variety of *Forms*, not in the first part of the Appendix, will be found amongst the *Precedents*.

The author's reasons for omitting to supply some short precedents under the act of 8 & 9 Vict. c. 124, "To facilitate the Granting of certain Leases," are thus stated :—

"The first and principal one is, that he believes leases of the description alluded to are, and will continue, almost wholly unknown in practice. With great submission to those who entertain a different opinion, Mr. Platt states, that he cannot think that a good system which renders reference to a foreign instrument necessary to the construction of the one by which parties profess to be bound, their own being in fact but a brief abstract of a document to which they can rarely have access otherwise than through the agency of their professional adviser, and being comprised in terms which

are to signify much beyond their ordinary import. He doubts whether the diminution of expense will, after all, be so good as the advocates for the act anticipate : for the length of a qualification where necessarily introduced, will, in a great degree, counterbalance the saving effected by the adoption of the statutory form. Suppose, for example, a party to take a lease on the understanding that he is to pay rent, and to repair during the term, and to yield up possession of the premises in repair at the end of the term, without reference to accidents by fire : in this case, he would, in compliance with the statute, covenant "to pay rent" (as in column I, No. 1,) "and to repair," (as in column I, No. 10;) but, on referring to column II. of that number, it appears that those words signify that he is not to leave them in good repair under all circumstances, but is to have the benefit of an exception of "reasonable wear and tear and damage by fire," which would be clearly inconsistent with the general covenant to repair. The draftsman would, therefore, be put to the alternative of declaring, in some form of words, that the covenant to yield up in repair should not be construed to contain the exception, or of setting out the covenant at full length without the exception; thus presenting a sad medley of ordinary and statutory forms in the same deed. It is fortunate, however, that they who desire their leases to be prepared in conformity with the act, which, together with the abridged forms, is inserted in the Appendix, Vol. ii., p. 577, et seq., will find in it ample directions for their guidance. The real evil to be complained of is, not so much the length of the usual clauses, as the severe pressure of the stamp duties, from which even the counterpart and duplicate are not exempt."

We close this notice, doubting not that the learned author will be amply rewarded for his meritorious labours.

## IMPROVEMENTS IN CHANCERY PRACTICE.

### AFFIDAVIT OFFICE.

THE abolition of the Public Office in Chancery, and the transfer of the business to the Clerk of Affidavits, is an alteration "in the right direction." The time of one of the Masters is saved to the suitors, and there is some gain to the practitioners by performing the act of swearing and filing the affidavits at the same time and place. This is one of the improvements which was suggested by an eminent solicitor in the 1st volume of the *Legal Observer* nearly 17 years ago. It was thus written :—

"Office copies to be made in a useful form on brief paper, and at 4d. a folio, which leaves ample profit. A fee of 6d. to be paid besides for filing, and for searches.

"Affidavits in town to be sworn at the affidavit office, on filing them."

Another suggestion was made at the same time, which has not yet been, but we trust will be, carried into effect, namely, —

"To prevent delay, every person filing an affidavit should deliver a copy the same day to the opposite party, who should be at liberty to examine it, for a small fee, with the original." 1 L. O. 88.

One more and a very important recommendation may still be made,—namely, the authority to solicitors in different parts of the town to administer oaths.

## LEGAL EDUCATION.

### PROPOSED LAW UNIVERSITY.

IN order to submit the Report of the Committee on Legal Education in a convenient form to our readers, we have subdivided it into various portions:—endeavouring in each instance to present a distinct section or topic for their consideration. Pursuing this plan, we now advert to the statements and recommendations of the committee for remodelling the Inns of Court, and forming out of them a College or University of the Law.

On leaving the university, (say the committee) every student proceeds to select and prepare for that profession to which he or his friends consider him best suited; and it is then that the future lawyer looks around for special instruction. It is then also that the public, but above all his own profession, ought to be ready to meet him. An institution for special professional instruction in the two branches of the profession, now becomes necessary, and following the course of the example and experience of the two other learned professions, it does not appear that its organization and management can be confided with more propriety and advantage to any body than to the profession itself; and the committee proceed to state that—

"It so happens, that this view is not only the most rational, but in the present instance the most practicable. The profession in these countries have a recognized organ for such purposes in the 'Inns of Court;' societies not only commanding the consideration of the public and profession, but originally, as it appears from the evidence before your committee, founded and endowed for these very objects, and thus requiring no innovation, but such modifications only as existing society may

demand, to fit them for places of special legal education. In this view, all witnesses, professional and non-professional, from England or Ireland, concur. Whatever differences exist, refer only to the manner in which such project may best be carried out.

"In England there are several of these societies; in Ireland one. The question, therefore, arises, whether these societies should act independently of each other, or co-operate, each in its sphere, for one general end.

"The great majority of witnesses decide in favour of the latter proposition. They suggest that the several Inns of Court, instead of each establishing for its own members a series, and possibly the same series of lectures, should each found a certain number, the most appropriate to that particular Inn, to which admission should be open to the members of all. The several Inns would thus form the colleges, as it were, of one common university: in this particular as in others, (such as their common halls, chapels, libraries, &c.) resembling our existing universities; and having in the bench, as their common head, the counterpart of the senate, council, or caput academicum of these institutions.

"The number, classification, and apportionment of these lectureships and courses to the respective Inns, must in great measure depend upon the circumstances of each, and the opinions and wishes of their several authorities and members. All that witnesses at present point out, or that can indeed be looked for in any project, is that due provision should, in the first instance, be made for instruction in the great departments of the profession, such as the Law of Real Property, Common Law, Criminal Law, Constitutional Law; and then gradually in those subsidiary branches connected with the principal, such as Commercial Law, Medical Jurisprudence, General Procedure, &c., &c. The last class might likewise embrace those departments for which chairs were also provided in the universities; such as International Law, Comparative Constitutional Law, &c.; and which so might form the link (at least might so be treated in the Inns of Court as to answer that purpose) between professional and non-professional studies. Nor would it be unwise, that two chairs should be endowed by the Inns in common, on the plan of similar chairs in foreign universities; the one for the purpose of conveying instruction on the Methods and History of Law, and which might serve as the introduction to whatever course the student might think proper to adopt afterwards; the other on the great principles of General Jurisprudence, or the Philosophy of Law and Legislation, which might in a like manner serve for its conclusion. The character of these professorships may appear somewhat less practical than that of others, and so far may seem to depart from what ought to be regarded and maintained as the peculiar character of this institution, as contrasted to that of the universities; but this objection on a little reflection will disappear. When it is considered

how much time and labour may be saved, how much error and disappointment avoided, how much the acquisition of knowledge may be facilitated by furnishing the student with chart and compass in the beginning, such objection can scarcely be urged against the first of these chairs. Still less against the second. It is at the conclusion of a course, when scattered facts and disjointed reasonings are to be gathered together and formed into one synthesis or system, in order to render them not only of special but general application, that such an aid as that proposed by the endowment of this second chair, becomes not merely valuable but essential. In the instance of a profession, too inclined by the after business of life to fall into the particular and technical, such a corrective, from its very character of comprehensiveness and philosophy, appears more particularly desirable.

"Nor is the advantage in point of economy, extent, and completeness in respect to professorships, the only one to be expected from this combination of the Inns amongst themselves, for one general purpose. The field of exertion and emulation, to both professor and student, is greatly enlarged, habits of intercourse and sympathy, so desirable amongst men whose future lives and labours lie so much together, are generated, and a harmony in instruction and action secured, the result of which cannot but be felt beneficially through the whole range of the lawyer's after practice, and ultimately, no doubt, in the decisions of the bench, and the acts and other proceedings of the legislature.

"The economical arrangement and maintenance of these professorships, as regards appointment, remuneration, and dignity, must necessarily be determined by those from whom they are to originate, nor can any other recommendation be ventured on beyond those of a general nature. The Inn of Court which endows should appoint, with as much as possible the concurrence (to be obtained directly or indirectly) of the other Inns: the remuneration should be regulated by the joint consideration of the eminence of the individual and the importance of the chair; and to be effective, both as regards the professor and the student, by securing his independence but at the same time stimulating his exertion, it should be formed of a fixed salary and fees. Such is in general the concurrent suggestion of all the witnesses, and by some it is insisted on as indispensable. His functions would naturally place him in the same rank as the professors of our universities. It may be a question whether this chair should be held during good behaviour; or for a limited period, with power of re-election. The latter arrangement appears to have been contemplated by some of the Inns, and though liable to some objection, on the whole appears preferable to any other.

"It is not sufficient to establish a good course or courses of instruction, or to provide well endowed and well selected professors to communicate it; the important point is to see that such advantages be not only acceptable

but accepted. On the result all agree; few on the means by which it can be accomplished.

"It is not sufficient that the professor should deliver a lecture: lectures, without examination frequent and accurate, without class teaching, without private instruction, fall dead on the majority of hearers; and however popular in the outset, sooner or later, on the concurrent testimony of some of the most experienced lecturers and lawyers themselves, gradually deteriorate, and finally lose their efficacy and audience. But lectures, class teaching, and private instruction, may each and all be excellent, and yet be productive of no real benefit, unless it be also practicable to ensure hearers. Some maintain that this result is sure to follow from the superior and intrinsic merit of the instruction and instructor; that to secure acceptance, it is only necessary to render acceptable: while others again reply, that without incentive, or obligation of some kind remote or immediate, the highest excellence will not be appreciated, and the most valuable opportunities will be contemptuously passed by."

The committee observe, that unfortunately for the student and the public, general experience (it is scarcely necessary to refer to particular evidence) testifies in favour of this latter opinion; nor is there any reason why a student for the bar should be regulated by other principles of action than students for any other profession. The question then to be decided is this, to what extent can this moral power, either of inducement or compulsion, be applied?

"The inducement here may be so direct and strong as to be tantamount to compulsion. If the attendance on certain courses of lectures be required, and the results of this attendance be tested by public examination, periodical as well as final, as the indispensable condition for admission to the bar, and if the permission to attend such courses and to pass such examinations be also made conditional on a certain amount of preliminary knowledge, also to be proved by an entrance examination; it is clear that to all intents, such preliminary examination, attendance, and final examination, will be compulsory on all who destine themselves to the profession, and will operate in securing, if conscientiously followed out, an educational qualification for every barrister. It is quite true, indeed, that this can constitute no guarantee for superior ability or acquisitions, nor is it meant that it should. Its object is simply to preclude incompetency and indolence. Superior qualifications may be tested by another measure, by the acquisition of honours. And here it is that voluntary attendance and voluntary examinations have their proper place. To incite, however, to the contest for such honours, and to the fulfilling of the conditions on which they depend, there must be an inducement, contingent and remote perhaps, but

still real, held out not merely in the course, but in the profession itself. As admission to the bar is the reward of passing through the ordinary course, so eligibility to certain higher situations at the bar should be the prize for passing through the extraordinary. In this suggestion there is no deviation from principles to a certain degree at present recognised; eligibility to certain offices is at this moment restricted to certain classes, and to certain conditions. There are many posts to which none are eligible but barristers of a certain number of years standing. Some of the most competent witnesses have already shown that such test of qualification, though obviously meant to be proof of competency, is often futile. It admits, however, the principle: your committee contend only for its efficient application.

These suggestions, it is right however to observe, do not appear to be supported by some of the more eminent witnesses.

"Lord Brougham, for instance, whilst he strongly insists on the importance of lectures, (but provided only they be accompanied by class instruction and frequent examination,) is not prepared to go to the length above stated. He would make attendance on lectures, but not examination to prove whether they had been profitably attended or not, the condition for admission to the bar. He would insist on attendance on lectures on the part of the members of the Inns of Court, but not take any precaution to assure the lecturer or the society that the students, by sufficient amount of previously acquired knowledge, were in a position to take advantage of those lectures. He objects to an entrance examination still more than to a final examination; he considers it unnecessary, as not within the competence of the society. But the society at present imposes conditions for admission; and it is a question only of how many or how few, of what or of when. There is no reason for preferring the condition of paying certain fees preliminary to admission, to the condition of passing through certain examinations. This is the view which Lord Campbell takes. He holds that the Inns of Court have a right to impose such conditions; that such conditions are no infringement of inchoate or any other rights; and that when conditions are in question, intellectual, in reference to an intellectual profession, ought to be preferred to any other. Nor are the attendants on these lectures of an age to exempt them from all necessary regulations to ensure attention. The value of the institution depends on the certainty that such attention has been paid, and that benefit has been derived from it. It is what every institution of education (be it what it may) should ever aim at; it is what the public, who desire to secure themselves from ill-qualified practitioners, naturally look for. Now all the evidence before your committee goes to show the inefficiency of lectures merely voluntary, of courses unless tested by examination, of admission to classes or honours unless fairly won, of an

education shown by skill in routine formalities instead of substantial knowledge and habitual industry. As they contemplate in the establishment of a legal institution, the means not only of providing legal instruction; but also the arrangements by which it may effectually be enforced, they necessarily look not to those portions of the academical system which have failed, but to those which have been successful. Much, therefore, as they approve of the institution of a series of lectureships on the principle and regulations already noticed, they cannot think they will have the efficiency which they ought to have unless preceded by a first examination to qualify for admission to the Inns of Court, and a second on the termination of the period and courses prescribed, to qualify for admission to the bar. These examinations should be obligatory, those for honours might be voluntary: the extent and conditions of each should be determined by the highest authorities in the institution."

"From the evidence before your committee, and the proceedings which have already taken place on the subject, it would appear that there existed some apprehension that this measure would, if attempted, be either opposed by the profession, or fail. If it were a question of temporary only or local circumstance, it might be no more than prudence would dictate to hesitate and delay; but if this apprehension arises from a permanent conviction of its inutility or injury, it then affects the whole subject, and requires to be at once considered in reference to the nature and object of the institution itself."

The committee add, that there seems to be no reason why a Law College (for it is in that light that the union of the Inns of Courts must be considered, or otherwise it will be necessary to look elsewhere for such a body) should be conducted on other principles than a College of Theology or a College of Medicine; and so far from deeming that such arrangements as those above noticed, would have the effect of imposing unnecessary restrictions, many on the contrary consider it desirable that this discipline should be extended from the intellectual to the moral regulation of the institution, by the maintenance of a certain surveillance over character and conduct, so far as might be consistent with the religious and civil liberty of the individual and the public.

"The judges naturally stand as the protectors, guides, and controllers of the profession; and the bench would thus appear to be pointed out by every circumstance as the proper authority to govern such an institution. It may be a matter of discussion how such authority should be exercised, whether as governors or as visitors, leaving to the benchers of the several inns, or a deputation or delegation from each, like the heads of houses in the universities,

the usual administrative rights and duties. The judges in England cease on arriving at the serjeanty to be benchers, and are thus in a position to execute with impartiality the supreme controlling and directing power. The statutes or bye-laws proposed by the benchers, and stamped with the fiat of the judges, could not but be received by the public and the profession with that respect so essential to the enforcement of all regulations, but especially of those which regard educational establishments.

"It does not appear, from the witnesses examined on the question, that such arrangements can be carried out with the same facility in Ireland; at the same time there is nothing which is likely to interpose serious difficulty. There, as here, it is admitted, that mere voluntary associations for such purposes will not do; and without in any degree derogating from the credit due to the projector and principal of the Law Institute, it is too obvious that it laboured from its birth under the defects incidental to such associations, arising from precariousness, uncertainty, and want of efficient authority and control. An institution intended for the education of the profession ought to have its roots as deeply fixed, its regulations as universally recognised, its powers as unequivocal and effective, as those of the profession itself. There, as here, as long as no insurmountable obstacle intervenes, the Inn of Court, which comprises the eminence and authority, and may be considered to represent the interests of bench and bar, ought to be adopted both by the profession and public, in preference to any new, certainly to any voluntary society. The King's Inn also has, in certain respects, an advantage over the English inns. It form a single body, and has not to consult the wishes of any other. But the King's Inn is likewise, it must be remembered, in an anomalous position; it enforces rules and regulations, raises fees, and prescribes conditions, not in reference to one branch of the profession only, but to both. Now under what warranty this has been and is still done, is subject to controversy, and attempts have been made and resisted to define and to assure it. It can hardly be expected, under such circumstances, that many difficulties should not arise to the formation and administration of any system, however in itself unexceptionable. The judges, too, by continuing benchers, are involved in all the real or supposed partialities of such a body, and cannot exercise in the same unquestioned and efficient manner, their authority in directing and controlling as they are enabled to do in England. But these objections are not irremovable. The proposition made and carried into effect at one period, by a royal charter incorporating the society, or an act of parliament determining and regulating the organization, powers, rights, and functions of the King's Inn, in reference to both branches of the profession, would go far to remedy these defects, and at the same time afford a favourable opportunity of combining with the new arrangements an effective system of legal education, in harmony with that

adopted by the colleges and the university on one side, and by the Inns of Court in England on the other."

## LAWYERS IN PARLIAMENT.

OF lawyers we may mention John Twezell Wawn, M. P., for South Shields, who was educated for the bar, though not actually called,—he has interested himself with the important and neglected subject of Mercantile Shipping and the Navigation Act, and the means (in these times of expediency) to keep it in due vigour.

There are several M. P. lawyers at the Irish Bar, a list of which we shall be able to give in an early number.

Mr. Austey, of the English Equity Bar, has for the first time been returned for Youghal.

We much regret to lose for the present the valuable services in parliament of Sir Fitzroy Kelly, Q. C., and Mr. W. H. Watson, Q. C.

The representation of the Scottish Bar shall also be duly regarded.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### Common Law Courts.

#### LAW OF RAILWAYS.

##### ACTION BY PROMOTER.

*Against provisional committee-man.*—*A.* and *B.* were the registered promoters, under the stat. 7 & 8 Vict. c. 110, of a railway company. A provisional committee was afterwards formed, at a meeting of which *A.* was appointed secretary, and *B.* solicitor, to the company, and other persons a managing committee: *Held*, that *A.* could not, merely upon these facts, recover against an acting member of the managing committee for services afterwards performed by him as secretary. *Wilson v. Viscount Curzon*, 15 M. & W. 532.

##### AGENT.

See *Partnership*.

##### ALLOTTEE.

1. *Committee-man.*—*Recovery of deposit.* An allottee of shares in a railway scheme which has proved abortive, may recover back, in an action for money had and received, the whole amount paid by way of deposit. *Walstab v. Spottiswoode*, 32 L. O. 180.

2. *Recovering back deposit.*—A railway company was provisionally registered, and a prospectus was issued, which stated the proposed capital to be 2,000,000*l.*, in 80,000 shares of 25*l.* each. The plaintiff applied to the provisional committee for 70 shares, in a letter, whereby she undertook to accept the same or any less number that they might allot to her,

to pay the deposit of 2*l.* 12*s.* 6*d.* per share thereupon, and to sign the parliamentary contract and subscribers' agreement when required. To this letter she received an answer, signed by the secretary, stating that the committee of management had allotted to her 30 shares, and requesting her to pay the deposit of 2*l.* 12*s.* 6*d.*, amounting to 78*l.* 15*s.*, into one of certain banks on or before a day mentioned. The plaintiff accordingly paid into one of those banks, in due time, the deposit of 78*l.* 15*s.*, and received the banker's receipt for the same. She afterwards presented the receipt to the company, and made several fruitless applications to the committee for scrip, and at length was informed that the directors had come to the resolution not to issue any scrip, and that the greater part of the deposits had been expended, and the balance would be rateably divided. It appeared that the directors, finding it impossible to go to parliament in the ensuing session, had determined not to issue any scrip; and that, of the entire number of 80,000 shares, 70,000 were allotted, but deposits were paid on 4,000 only, producing altogether the sum of 10,500*l.* In an action by the plaintiff to recover back from a member of the managing committee the sum of 78*l.* 15*s.*, so paid by her as deposits on the shares allotted to her: *Held*,

1st, That there was sufficient evidence of the final abandonment of the project.

2ndly, That, on its abandonment, under the circumstances above stated, the plaintiff was entitled to recover back, as money had and received to her use, the whole sum so paid by her.

An association of this nature does not amount to a partnership. *Wulstabb v. Spottiswoode*, 15 M. & W. 501.

Cases cited in the judgment: *Pitchford v. Davis*, 5 M. & W. 2; *Nockells v. Crosby*, 3 B. & C. 814; 5 D. & R. 751.

3. *Invalid contract.—Fraudulent misrepresentation.—Recovery of deposits.*—The prospectus of a railway company stated the capital to be 3,000,000*l.*, in 120,000 shares. On the plaintiff's application by letter, sixty shares were allotted to him, and the letter of allotment was headed in the same manner as the prospectus, and stated further what was not to be found in the letter of application, namely, that the allotment was upon condition that the deposit be paid on or before a given day, on pain of forfeiture, and the shares being disposed of to others. Eleven days before the given day the managing committee advertised that they had completed the allotment of shares, and there was some evidence of the plaintiff's having seen the advertisement. On the third day after the given one he paid his deposits, and in a fortnight afterwards executed the usual parliamentary contract and subscribers' agreement. In the following month a meeting was holden, the plaintiff being present, and it was then made known that at the date of the advertisement the committee had in fact only allotted 58,000 shares, although there were ap-

plicants for more than the 120,000 shares. At that meeting the plaintiff opposed the resolutions to continue the concern, and moved as an amendment that the deposits should be returned; but the chairman declined to put the amendment to the meeting. Subsequently the scheme was abandoned, and the plaintiff brought his action against a member of the managing committee to recover back the amount of his deposits.

*Held*, First, that the application for shares and the letter of allotment constituted no binding contract. Secondly, that the advertisement amounted to a fraudulent misrepresentation, and having been so found by the jury, as also that it was a material inducement to the plaintiff to sign the subscribers' deed, as well as to pay his money, formed a good ground of action, to which the terms of the deed were no answer. Thirdly, that the plaintiff's conduct at the subsequent meeting did not amount to any waiver of his right to recover. And fourthly, that the omission to direct the jury as to whether or not there was a binding contract was no ground for a new trial. *Wontner v. Shairp*, 34 L. O. 156.

4. *Action for deposits.*—A. applied to the provisional directors of a railway company for an allotment of shares, and 40 were afterwards allotted to him. Between the time of the application for shares and the letter of allotment several names had been withdrawn from the provisional committee and additional names had been added. A managing committee was appointed from among the provisional directors, and by them an action was commenced to recover from A. the amount of the deposits to be paid on the shares allotted to him.

*Held*, that inasmuch as the shares were not allotted to A. by the persons to whom the application for shares was made, the evidence failed to support the contract alleged in the declaration, and the plaintiffs were nonsuited. *Woolmer and others v. Toby*, 34 L. O. 302.

5. *Inspection of documents.*—In an action by an allottee of railway shares against a member of the provisional committee, to recover back his deposit, the court ordered that the plaintiff should have an inspection and copy of the subscribers' agreement and parliamentary contract, which both the plaintiff and the defendant had signed, and which were in the hands of the solicitors of the company; the plaintiff's affidavit stating that an inspection of them was necessary to him for the purpose of framing his case, and the defendant not showing that they were not within his power or control. *Steudman v. Arden*, 15 M. & W. 587.

Case cited in the judgment: *Morrow v. Sanders*, 3 Moore, 671.

#### ALTERATION OF LINE.

See *Shareholder*.

#### ARREST.

See *Bye Law*.

#### ATTORNEY'S LIABILITY.

1. *Appearance.—Joint-stock Company.—*



**Judgment.—Irregularity.**—In an action against the members of a joint-stock company the managing director authorised an attorney to accept service of process for all the defendants. The case proceeded, and after notice of trial, the same attorney, by the authority of the managing director, consented to a judge's order for payment of debt and costs. The money not having been paid, final judgment was signed, and execution levied on the goods of a defendant who had no notice of the proceedings. The court set aside the judgment as irregular.

In such case, if a defendant has had notice of the proceedings, the court will not interfere, unless the attorney be insolvent, when they will relieve the defendant on equitable terms. If the attorney be solvent, the court will leave him to his remedy against the attorney. *Bayley v. Buckland and others*, 34 L. O. 279.

2. **Costs.**—In a hostile suit between the directors of a railway company: *Held*, that the solicitor of a company would be liable for the costs of an interlocutory application, in case it should appear that he had acted without the authority of the company. *Exeter and Crediton Railway v. Buller*, 34 L. O. 180.

#### BROKER.

**Purchase of Railway scrip.**—The defendant, a shareholder, bought for the plaintiff scrip certificates, which were sold in the share-market, at a premium, as "Kentish Coast Railway Scrip," and were signed by the secretary of the railway company. The genuineness of this scrip was afterwards denied by the directors, who alleged that it was issued by the secretary without authority. In an action to recover back from the defendant the price paid to him by the plaintiff for this scrip, and for his commission, on the ground of its not being genuine: *Held*, that the proper question for the jury was, whether what the defendant intended to buy was that which was sold in the market as Kentish Coast Railway scrip. *Lamert v. Heath*, 15 M. & W. 486.

#### BYE-LAW.

**Arrest.**—A railway company made a bye-law that every passenger who should not deliver up his ticket when required should pay the fare from the place where the train originally started: *Held*, that, assuming the bye-law to be reasonable, the company had no power to arrest a passenger who, having lost his ticket, refused to pay the full fare. *Chilton v. The London and Croydon Railway Company*, 33 L. O. 479.

#### CALLS.

See *Shareholder*.

#### COMMITTEE.

See *Provisional Committee*.

#### CONTRACT.

See *Allottee*, 3; *Partnership*.

\* This and a few other recent cases in Equity are added to this section of the Digest. The other decisions are from the Common Law Reports.

#### DEPOSIT.

See *Allottee*, 1, 2, 3, 4.

#### EJECTMENT.

Service of declaration, in ejectment against a railway company, upon the secretary of the company, is good, by stat. 8 & 9 Vict. c. 16, s. 135. *Doe d. Bayes v. Roe*, 16 M. & W. 93.

#### EVIDENCE.

See *Provisional Committee*, 4.

#### LIABILITY.

See *Provisional Committee*, 1, 2, 4.

#### PARTNERSHIP.

**Provisional committee.—Contract.—Agent.**—The mere fact of a party having agreed to be a provisional committee-man, is no evidence of an authority to make contracts on his behalf.

The association of persons as provisional committee-men for the purpose of carrying out a scheme, is not in law a partnership, nor is there any implied agency on the part of one or more of the provisional committee to bind the others by his or their contracts.

Where a party has authorised his name to be inserted as a provisional committee-man in a prospectus, in which certain persons are described as the acting committee, and the prospectus has been publicly circulated, it is a question for the jury as to the inference to be drawn from the paper, and must depend upon the terms of each particular prospectus. *Keynell v. Lewis*, *Wyld v. Hopkins*, 33 L. O. 115.

#### PROMOTER.

See *Action*.

#### PROVISIONAL COMMITTEE.

1. **Liability.**—The defendant, in answer to an application from the secretary of a railway company to allow his name to be placed on the provisional committee, wrote to him consenting to do so, and, stated that "he concluded his liability would be limited to the amount of his shares." His name was accordingly published in the newspapers as one of the provisional committee, and on one occasion he attended and acted as chairman at a meeting of the committee: *Held*, that he was liable for the price of stationery supplied by the plaintiff, on the order of the secretary, and used by the committee, after the date of his letter to the secretary. *Barnett v. Lambert*, 15 M. & W. 489.

2. **Liability.**—The mere fact of a person agreeing to become a member of the provisional committee of an intended railway company amounts to no more than a promise that he will act with other persons, appointed or to be appointed, for the purpose of carrying the scheme into effect. Therefore, in an action against a provisional committee-man for goods supplied on the order of the solicitor of the company, it was *held*, that the law could not imply, from the mere fact of his agreeing to be a member of such committee, an authority from him to the other members of it to make contracts by himself or by the solicitor, nor an authority to the solicitor to make them on be-

half of the committee. If the party not only consents to be a provisional committee-man, but authorises his name to be inserted and published in a prospectus which merely states the names of the members of the provisional committee, and nothing more, that fact does not alter the liability. If it state the names of an acting or managing committee also, it is a question for the jury to say, whether it means that the latter are to take upon themselves the whole management of the concern, or that the former have constituted the latter their agents to manage it on their behalf, in which case the former would be liable for the contracts of the latter. Or, if the solicitor's name were mentioned in it, the question for the jury would be, whether it meant that he was to be employed by those of the committee who acted, or that he was already appointed by all whose names were mentioned, as their solicitor, to do all solicitor's work on their behalf; and further, what was the business then usually transacted by solicitors in such undertakings on behalf of the company. And the same as to the secretary.

Where there is also evidence that the defendant has acted with relation to the proposed scheme, it is a question for the jury, whether by his consent and acts, he has authorised the solicitor, or secretary, or any member of the committee, to pledge his credit for the necessary and ordinary expenses to be incurred in forming such a company; and if so, whether the work was done, and the credit given, on the faith of his being liable.

Such an intended association does not constitute a partnership, inasmuch as it constitutes no agreement to share in profit or loss. *Reynell v. Lewis*; *Wyld v. Hopkins*, 15 M. & W. 517.

3. *Decision of a co-ordinate court.*—The Court of Exchequer having decided the same point as that sought to be raised on showing cause against a rule nisi to enter a nonsuit, this court refused to hear the arguments, holding that the Exchequer decision was to be considered as binding until reversed by a court of error. *Barker v. Stead*, 33 L. O. 455.

4. *Attendance at Meeting.*—*Evidence of identity.*—In order to establish the identity of the defendant as having been present at a meeting of a railway provisional committee of which he was a member, for the purpose of making a resolution passed at such meeting admissible in evidence against him, it is not enough to produce the minute book of the proceedings copied from a previous rough draft, and containing, amongst those present, a similar name to the defendant's, and to show that the defendant was the only person bearing that name on the provisional committee, and that he had been summoned to attend it. *Giles and another v. Cornfoot*, 33 L. O. 13.

See *Action by Promoter*; *Partnership*; *Prospectus*, *Construction of*.

#### PROSPECTUS, CONSTRUCTION OF.

*Provisional committee.*—*Authority of managing committee.*—Where, in addition to the cir-

cumstance of the defendant's being a member of a railway provisional committee, it was proved that the published prospectus stated, that until an act of parliament should be obtained the committee of management was to have the control of the company's affairs, and to apply the funds, &c.: *Held*, that no authority, either express or implied, was given to the managing committee to contract on the credit of the provisional committee.

*Semble*, that any authority given by the terms of a prospectus is not to be considered as derived solely from the provisional committee. *Dawson and others v. Morrison*, 34 L. O. 230.

#### PURCHASE OF LAND.

*Expiration of powers given by a railway act.*—*Injunction.*—Where a power for the compulsory purchase of land is given by act of parliament for the space of three years, and before the expiration of the three years a jury meet to assess the value of certain land, but do not find a verdict until after the expiration of the three years: *Held*, that such verdict went for nothing, and an injunction granted to restrain the company from proceeding to take possession of the land. *Brocklebank v. Whitehaven Railway Company*, 34 L. O. 381.

#### REINVESTMENT OF RAILWAY MONEY.

9 & 10 Vict. c. 20.—Application to allow the security on which money had been invested under an order of the court to be changed, refused, there being no authority for doing so in the act 9 & 10 Vict. c. 20. *In re Harwich Railway*, 34 L. O. 104.

#### SCRIP.

See *Broker*.

#### SECRETARY.

*Assumpsit.*—*A.* and *B.* were provisional directors of a projected railway scheme, and *A.* was afterwards, with the consent of *B.* and the other directors, appointed secretary to the company, and *B.* attended meetings of the company whilst *A.* acted as secretary. The scheme was afterwards abandoned.

*Held*, that *A.* could maintain an action against *B.* for services rendered, and that *B.* by his own conduct was estopped from taking the objection that *A.* having been once jointly interested in the undertaking with him, could not divest himself of that liability so as to support the action. *Day v. Sharpe*, 32 L. O. 543.

#### SHAREHOLDER.

*Calls.*—*Alteration of line.*—*A.* applied for shares in a proposed railway from "Dublin to Mullingar and Athlone," and signed the subscription contract, and shortly afterwards sold the scrip. The directors subsequently obtained an act of parliament enabling the company to make a railway from "Dublin to Mullingar and Longford," and there was a clause requiring the company to purchase a canal. In an action against *A.* for calls, *held*, first, that he was the shareholder and not the vendee of the scrip; secondly, that he was not discharged from liability by reason of the alteration in the

line sanctioned by parliament, or the obligation to purchase the canal. *The Midland Great Western Railway Company v. Gordon*, 34 L. O. 14.

[The other sections of the Analytical Digest in the present volume are:—

1. Law of Attorneys, pp. 8, 224, 376.
2. Law of Costs, pp. 31, 224, 377.
3. Law of Wills, p. 56.
4. Law of Property and Conveyancing, p. 74.
5. Construction of Statutes, p. 101.
6. Principles of Equity, p. 127.
7. Equity Pleadings, p. 148.
8. Equity Practice, p. 173.
9. Evidence, p. 199.
10. Privy Council Appeals, p. 247.
11. Court of Review,—Bankruptcy, p. 269.
12. Criminal Law, p. 294.
13. Law of Nisi Prius, p. 321.
14. Poor Law and Magistrates' Cases, 350.
15. Law of Railways, 402.

Our readers will thus be enabled readily to refer to each part of the Digest. This division of the points decided into the general subjects to which they belong, is evidently more convenient for reference both by the Practitioner and the Student, than the miscellaneous alphabetical arrangement usually adopted.]

## RECENT DECISIONS IN THE SUPERIOR COURTS

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Lord Chancellor.

*Jones v. Fawcett.* July 19, 1847.

#### SUBSTITUTION OF A NEW NEXT FRIEND BY PLAINTIFF, A MARRIED WOMAN.

*The substitution of a new next friend by plaintiff, a married woman, is not a proceeding as of course, and therefore the court will not change a substantial next friend for a person who is insolent or a pauper.*

Mr. Teed, for the defendant in this suit, moved to discharge an order of Vice-Chancellor Knight Bruce, made on the 3rd of March last, appointing one Mr. S. to be the next friend of Mrs. Jones, the plaintiff, in the room of Mr. Gregory, the latter paying the costs of the application, and giving security for such as had then been incurred. The grounds of the present motion were, that the proposed next friend was not in solvent circumstances, and that having procured a friend to accept certain bills of exchange for him, he had absconded without taking them up when due. [Lord Chancellor. The question is whether you can prevent the plaintiff from going on with the suit, or, in other words, whether the court can withhold

its leave to permit the plaintiff to remove an approved next friend and substitute another who may be a pauper.] This suit would not be stayed, as there is already a subsisting next friend; it is, therefore, merely an exercise of a judicious discretion to refuse the application of the plaintiff, as it would deprive the defendant of the security now possessed for the payment of the costs. This is not a case of appointing a next friend in the first instance. *Dowden v. Hook*, 8 Beav. 399; *Pennington v. Aloin*, 1 Sim. & Stu. 264; *Anon.* 1 Atk. 570, and *Drinan v. Mannix*, decided by Lord Chancellor Sugden in 3 Dru. & War. 154.

Mr. Collins, who was with Mr. Teed, referred to *Melling v. Melling*, 4 Mad. 261; *Lawley v. Halpen*, in Bunb. 310, cited in Daniel's Chancery Practice, p. 120 (Headlam's Edn.)

Mr. Bell, *contra*, supported his honour's order. [Lord Chancellor. You must show a case where a plaintiff, a married woman, is at liberty to come at any time and change her next friend as of course.] Not aware of any such case, but authorities are equally divided on the subject, whether a *feme covert* is or not compellable to procure a solvent person for her next friend. In *Dowden v. Hook*, *suprà*, the Master of the Rolls remarks, that there are two cases in which she has been allowed to sue by a next friend *in formâ pauperis*, viz., *Collier v. Young*, 25th October, 1743, and *Valentine v. Walker*, 19th May, 1834.

The Lord Chancellor. The question as to the plaintiff's right to nominate any person as her next friend in the first instance, is not raised in the present case. There is a next friend with whom the defendant is satisfied. It is clearly not a matter of course to change the next friend at the will of the plaintiff, for if it were, it would be unnecessary to bring the other side here. It is a matter of indulgence to be granted in the discretion of the court. Therefore, the interests of the defendant and not those of the plaintiff, must be consulted. The proposed substitute is evidently not a fit person to be appointed. Facts which are not contradicted are sworn in an affidavit impugning his honesty and solvency—both important circumstances in the matter of security for costs. I therefore think that the order of the Vice-Chancellor must be discharged.

### Rolls Court.

*Moore v. Claghorn.* July 13 and 27.

#### EQUITABLE FEE.—JOINT TENANCY.

*Held that a devise to trustees in fee in trust for the use and benefit of A. B. and C., the rents to be paid for their maintenance, and the survivors and survivor of them share and share alike, created an equitable estate in fee in A. B. and C., as joint tenants.*

THE questions in this suit turned upon the effect to be given to a decree of copyholds to trustees "in trust for the use and benefit of the

three illegitimate children of the testator, the rents to be paid for their maintenance, and the survivors and survivor of them, share and share alike." Three different constructions were contended for by different parties.

Mr. Turner and Mr. Pitman, for parties claiming under the survivor of the three children, maintained that the devise created an equitable joint tenancy in fee. The whole legal interest being given to the trustees, the whole equitable interest passed to the *cestui que trusts*. They cited *Knight v. Selwyn*, 3 Scott, N. R. 409; and the cases referred to in Jarman on Wills, ii. 177, 178, especially *Bacon v. Roach*.

Mr. Lloyd, for an assignee of one of the other children, contended that the devise passed the equitable fee to the three *cestui que trusts* as tenants in common.

Mr. Purvis, for one of the heirs at law of the testator, contended that the *cestui que trusts* took estates for life only. There must be a clear intention upon the will to create a trust; but here there was nothing to show that the testator intended to pass the whole interest. He referred to *Burr v. Swindles*, 4 Russ. 283; *Esdaile v. Vaughan*, 1 R. & M. 504; *Vaughan v. Esdaile*, 8 Bing. 323; *Doe d. Lean v. Lean*, 1 Q. B. Rep. 229.

Mr. Schomberg, for another of the heirs at law, took the same view, and urged that there was a good reason here for giving the estate to trustees in order to escape any risk of forfeiture, which distinguished this case from those cited by Mr. Turner. He cited *Roe d. Miers v. Jeffries*, 7 Durn. & E. 589.

Lord Langdale said, that the testator gave the whole legal interest in the copyhold estates to the trustees, and then declared that these estates were to vest in them for the use and benefit of his three children. He thought that no trust resulted to the testator or his heirs, but that the devise made the children joint equitable tenants in fee. If the words "survivors and survivor, share and share alike," had been introduced into the original gift to the *cestui que trusts*, he thought that they would have created a tenancy in common, but that in the place where they were introduced they applied only to the direction for maintenance.

*Re David Taylor.* July 18th, 1847.

ORDER TO COMMIT.—NON DELIVERY OF DOCUMENTS.

*The course of practice to enforce the delivery up of documents is, to obtain first the general order for delivery, then an order specifying some limited time, then the four-day order, and lastly the order to commit.*

In this case Mr. Rogers moved for an order to commit Mr. Taylor for not having delivered up certain deeds and papers, in compliance with an order dated the 22nd of April, which ordered their delivery within a week, and which had been preceded by an order of the 23rd of March, directing the delivery generally.

But Lord Langdale said, that he was not entitled to the order for committal. The course

was, first to obtain the general order, then an order specifying some limited time, then the four-day order, and then the order to commit.

Vice-Chancellor of England.

*Varty v. Duncan.* July 10, 1847.

MISTAKE.—ISSUE PRO CONFESSO.

*Where a defendant had obtained an order that plaintiff should proceed to trial of an issue by a certain time, or that in default, the issue should be taken pro confesso as against the plaintiff, and the plaintiff omitted through mistake to give notice in time of the trial, an order to take the issue pro confesso refused.*

In this case it appeared, that on the 9th Feb. last, an order was taken by the defendants without opposition, that the plaintiffs at the Midsummer sittings after Trinity Term then next, should proceed to a new trial of the issue at law, directed by an order in the cause dated Nov. 4, 1846, and in default thereof, that the issue might be taken *pro confesso* in favour of the defendant Duncan. No notice of trial of the issue had been served on Duncan, and the last day for setting down the issue for trial in pursuance of the said order, was the 14th of June last, and plaintiffs not having set it down,

Mr. Walker and Mr. Elmsley now moved on behalf of defendant Duncan, that the issue might be taken *pro confesso* in favour of him, as against all the plaintiffs, citing *Casborne v. Barsham*, 5 Myl. & Cr. 113.

Mr. Bethell and Mr. Schomberg, contra, urged, that the omission on the part of the plaintiff's solicitor to give notice of trial was an oversight on the part of his clerk, he not being aware at the time of the order of 9th Feb. 1847. That the plaintiff had immediately applied to a judge at chambers for leave to enter the issue *nunc pro tunc* and offering to pay the defendants the costs incurred—that the defendant Duncan had refused, and although plaintiffs had endeavoured in every way to rectify the mistake, Duncan had tried to prevent them from doing so—that the case of *Casborne v. Barsham*, though cited by the other side, was really in favour of plaintiff. They cited *Hood v. Pimm*, 4 Sim. 101.

The Vice-Chancellor said, that this was a common case of a mistake, and he mentioned this particularly, because there had been a case before him about a twelvemonth since where a clerk had made a slip, and he refused to relieve, not because there had been a mistake, but because there had been gross negligence. In the present case it seemed there was a mistake, coupled with an intention which existed on the part of the plaintiffs so long ago as the 9th Feb. last, to go on and execute the order of the court. There was no opposition offered to the motion, and the order was made on a mere affidavit of service, but the thing slipped out of the mind of the parties who ought to have served the notice of trial. They were wrong in not being more alive to their duty; but when

the error was discovered, a summons was immediately taken out before a judge, and an offer made to pay all the costs incurred and put the case in the same situation as before. The defendant Duncan refused this offer, and strenuously opposed having the matter set right. Was that fair? There had been inattention, but he thought that it had been counteracted by the obstinate opposition of Mr. Duncan. In common fairness he ought to have proceeded under those circumstances, and seeing there had been an error on both sides, he considered the best thing he could do, was to make no order at all.

### Court of Review.

*Ex parte Morrison, in re the London and Birmingham Extension Railway Company.*

June 30, 1847.

#### PRACTICE.—SERVICE OF PETITION.

*A petition by some of the directors of a railway company, and which was served on the petitioning creditor and official assignee, seeking to annul a fiat issued against the company after its dissolution under the provisions of the act 9 & 10 Vict., c. 28, was ordered to stand over, that service of it might be made on others of the directors who did not coincide in the view of the petitioners.*

THE petition, in this case, was presented by two of the directors of the company, praying that the fiat issued against the company under the statute of 7 & 8 Vict., c. 111, might be annulled.\*

Bacon and Glasse supported the petition.

Russell and Hawkes, for the petitioning creditors and official assignee, said that the petition could not be heard, it not having been served upon any persons representing the company. Although the company was dissolved at the date of the fiat, the 28th section of the 8 & 9 Vict., c. 28, enacted, that upon the petition of any three of the committee, or of any creditor, a fiat in bankruptcy should issue against such company by the registered name or style of such company, and the company should thereupon be deemed to be within the provisions of the 7 & 8 Vict., c. 111, in all respects as if a fiat in bankruptcy had issued against it under the said act before its dissolution.

The Chief Judge said:—The petitioners are two only out of a number of twelve or fourteen persons, who, at the time when I understand the company was dissolved, namely, in September last, were its managing or governing body, that is, its directors, or committee of management, or whatever their designation may have been. That state of things is, as I understand, admitted. I understand it to be further admitted, that not one of the number of twelve or fourteen has been served with

this petition, except, of course, if it is an exception, the petitioners who present it; and that of those who have not been served, some dissent from the view taken by the petitioners, who desire that the fiat should be annulled, and that of those some one at least is within the jurisdiction of the court. I am of opinion that in such a state of things this petition cannot be heard. It is a different question whether any interim order should be made with regard to the proceedings before the commissioner. I do not suppose that it has entered into the imagination of any one, that it could be necessary to serve every shareholder, or that any person has thought of any such thing being required. All the court requires is that some substantial person or persons in *pari conditione* with the petitioners, but, taking a different view of the matter, should be served.

#### LAW PROMOTION.

THE Queen has been pleased to appoint William Darnell Davis, Esq., to be Chief Justice, and William Snagg, Esq., to be her Majesty's Attorney-General for the Island of Grenada.

#### THE EDITOR'S LETTER BOX.

WE have made inquiries for "Rogator" as to the time when and occasion on which the Crown last exercised the power of issuing out the writ "*ne exeat regni*," but have not yet procured the information.

The effusion of "P., jun.," is, we apprehend, not adapted to our pages; but we recommend him to pursue his studies, and hereafter we shall hope to find him a useful correspondent.

A correspondent at Bristol, observing the report of the case *ex parte Weymouth*, 34 L. O. 252, where it was stated that the rule was made absolute "to take out the certificate at once, without giving any notice or *paying any arrears*," asks the meaning of this latter part of the rule? No doubt the new rule of court does not compel an attorney, who has not taken out his certificate immediately on admission, to pay up arrears of duty for the time which may have elapsed between the period of his admission, and his application for a certificate. The form of the rule is correctly stated in the report; and the reason of it appears to be this: if the attorney, in the affidavit in support of his application for a certificate, could not swear that he had not practised since his admission, he would be required to pay the duty and a fine.

"Taciturn" refers our correspondent "An (old Subscriber)" to the act 6 & 7 Vict. c. 85, by which it is enacted that witnesses are not to be excluded from giving evidence by incapacity from crime or interest. Therefore, a shareholder is, without doubt, a competent witness on behalf of a joint-stock bank.

\* His honour threw out that *Richardson v. Larpent*, 2 Y. C. C. C. 507, was an analogous case.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

—————  
SATURDAY, AUGUST 28, 1847.  
—————

—————“Quod magis ad NOS  
Pertinet, et nescire malum est, agitamus.”

HORAT.

### PROCEEDINGS AND PRACTICE OF ELECTION COMMITTEES.

HAVING described in the last number, as minutely as our limits would permit, the construction of select committees appointed for the trial of controverted elections, we proceed now to state the course of proceeding after the committee has met; premising that the hour for the first meeting is fixed by the house, and must be within 24 hours after the committee has been sworn, unless Sunday, Christmas-day, or Good Friday, should intervene.

The committee are attended by a committee clerk, who takes minutes of the proceedings, and also by a short-hand writer, who is sworn “faithfully and truly to take down the evidence given before such committee, and from day to day, as occasion may require, to write, or cause the same to be written, in words at length for the use of the committee.” The committee has authority to send for persons, papers, and records, and all witnesses are examined upon oath, which is administered by the committee clerk. After the committee has met, the parties, represented by their counsel and agents, are called in, and the petition, or petitions, if there be more than one referred to the committee, is or are read. If there be two persons claiming to act as returning officers, and the house has come to any resolution providing for such an event, the resolution is read; or, if there be a double return, the resolution of the house of March, 1727, providing which of the parties should be heard in the first instance, is also read. It is usual

for the committee, at this meeting, to enter into resolutions regulating the mode in which they desire the inquiry should be conducted; but those resolutions necessarily vary, being in general framed with reference to the alleged circumstances which the committee expect to be called upon to investigate in the particular case, and are frequently modified in the course of the inquiry, whenever it is found necessary for the purposes of justice. The resolutions commonly adopted by committees, having no reference to the particular subject-matter of inquiry, are, 1st, That counsel shall not be at liberty to go into any matter not referred to in his opening statement. 2ndly, That no more than two counsel representing the same interest shall be heard at the same side on any point. 3rdly, That no witness shall be examined who remains in the room during any part of the proceedings, &c. Where there are different parties before the committee, who have really separate interests, each party is entitled to be heard by his own counsel, and although two only can be heard, it is not unusual to retain a third, or even a fourth, to act in the absence of others, as occasion may require.

The direct duty which devolves upon the select committee is, to try the merits of the election or return, or both; and in doing this the committee is incidentally required to determine—whether the petitioners or the sitting members, or either of them, are duly returned or elected—whether the election is void, or whether a new writ ought to issue; and they may also agree to any resolution arising out of the circumstances which have come under

their consideration, which resolution should be reported to the house, at the time when they report the determination they have come to in respect of the petition or petitions submitted to them.

When any difference of opinion arises amongst the members of the committee upon any point submitted for their determination, and they desire to deliberate, it is usual to clear the room of all strangers. The question is then put by the chairman, and the names of the members voting pro and con entered upon the minutes. The question is decided by the majority, but if the numbers are equal, the chairman has a casting vote in addition to his own vote. If the committee divide upon any question, every member is required to vote for or against the proposition.

Election committees sit from day to day, and cannot adjourn for a longer period than 24 hours, (unless Sunday, Christmas-day, or Good Friday intervene,) without a special application to the house. It is the duty of the members of a committee to attend at the hour appointed, and the committee cannot proceed to business until all the members are present, unless leave of absence has been previously granted by the house. If the committee is not formed by the attendance of all the members, within an hour after the time appointed for the first meeting, or within an hour after the time fixed by adjournment, the chairman adjourns, and reports the fact of adjournment, with its cause, to the house. In case of sickness, or other special cause, verified upon oath, the house will excuse the attendance of a member, and such member is thenceforth precluded from sitting or voting in the committee; but a member absent without leave or some urgent necessity, is liable to be taken into the custody of the Serjeant-at-Arms, and punished, or censured, as the house may think fit. If the chairman of a committee die, or is excused from attendance, the remaining members of the committee choose a chairman from amongst themselves; and if the votes for a chairman are equal, the member whose name stands first has the casting vote. If, from any cause, the number of attending committee-men be reduced from five to any less number than three, and so continue for three sitting days, the committee is dissolved, unless the parties all consent that the remaining committee-men should continue to act. When the committee has been dissolved before coming to any determina-

tion, a new committee is appointed in the manner already described.

As before intimated, the course of proceeding in committee is necessarily governed in a great degree by the nature and subject-matter of the inquiry. Where candidates petition to be seated, it is the ordinary course to hear the cases of such candidates in the order in which their petitions are marshalled by the house. In the case of a double return, the candidate whose name is first returned, or whose return is immediately annexed to the writ, is first heard. Preliminary objections are often taken with regard to the form of the petition, or the circumstances of its presentation, the right or character of the persons subscribing it, or the eligibility of the candidate it is proposed to seat. These and other preliminary objections, of a similar nature, are usually decided by the committee before they enter upon the merits of the petition.

It sometimes happens that after a select committee has been appointed, the sitting member declines to continue a party to the inquiry, and abandons his right to sit as member. Under such circumstances, the course of proceeding adopted by committees has not been uniform, for whilst some committees have declared the petitioning candidate duly elected without more, others have required the petitioners to proceed and establish their cases.

When the preliminary objections are disposed of in favour of the petitioner, or if no preliminary objections be made, the senior counsel for the petitioner opens his case, concisely stating every fact on which he means to rely, so that the opposite party may be fairly apprised of the nature of the evidence to be adduced; and bearing in mind, that every fact he can be permitted to establish in evidence must support some one or more of the allegations contained in the petition. Where there are several distinct allegations in a petition, the determination of any one of which would be decisive of the matter in issue, it is not uncommon for the committee to resolve, with or without the consent of the parties, that such questions shall be tried and determined separately, in such order as may be deemed convenient, having reference to the nature of the questions to be decided, and the time likely to be occupied in the inquiry. When the determination of any particular allegation of a petition, either in the affirmative or the negative, would not decide the right of the petitioner, it is not



usual to determine particular allegations in the petition, but it is found more convenient to hear all that can be proved in support of the petitioner's case, and then to call upon the counsel for the sitting member for his answer to any allegations which are deemed material and have been supported by proof.

After the opening statement of the petitioner's case, the next proceeding is, the production and proof of the poll books, which cannot be dispensed with, even when the inquiry does not involve a scrutiny as to the legality of particular votes, or any question as to the number of votes given for any candidate. As before intimated, (*ante*, p. 308,) the clerk of the Crown in Chancery is the person who has regularly the custody of the poll books, and upon service of a warrant signed by the chairman of the committee, this officer produces the poll books, and their production from his custody is declared by stat. 6 Vict. c. 18, s. 96, to be sufficient *prima facie* proof of their authenticity.

As already stated, (p. 387, *ante*,) when it is intended to question the validity of votes given for any candidate, at an early stage of the proceeding, and before the select committee is actually appointed, lists of the voters intended to be objected to must be delivered by the parties to the clerk of the general committee, specifying against each voter's name the particular objection or objections to be taken to his vote; and the select committee will not allow any objection to be taken to a vote, unless the name of the voter is found in the list, and the particular objection meant to be relied upon is specified in the list. It is a frequent subject of discussion in committee, whether the evidence adduced is sufficient to support the objection specified in the list against the voter's name, and a multitude of cases are reported in which this question has arisen, but no general principle can be deduced from the decisions.

Since the passing of the Reform Act, the conclusiveness of the register, as to the rights of voters named therein, has been the subject of many elaborate arguments in committee, and the decisions on this subject have not been always uniform. The 2 W. 4, c. 45, s. 60, provides, that upon any petition complaining of an undue election or return, the petitioner, or the person defending, may impeach the correctness of the register by proving that the name of any person who voted was improperly inserted or retained, and the name of

any person who tendered his vote improperly omitted from such register. The 6 Vict. c. 18, s. 66, however, gives a right of appeal, against the decisions of the revising barrister, to the Court of Common Pleas, and declares that the judgment of the Court of Common Pleas shall be final and conclusive in point of law, and binding upon every committee appointed for the trial of any petition complaining of any undue election or return; and the 98th section, advertent to the doubts that had arisen as to the meaning of the provision in the Reform Act, above referred to, declares, that it shall be lawful for the committee "to inquire into and decide upon the right to vote of any person who, being upon the register of voters in force at the time of such election, shall have voted at such election, or, not being upon such register, shall have tendered his vote at such election, in case the name of such person shall have been specifically retained upon such register, or inserted therein, or expunged or omitted therefrom, by the express decision of the revising barrister who shall have revised the lists of voters from which such register shall have been formed: and also, that it shall and may be lawful for such committee to inquire into and decide upon the right to vote of any person who, being upon such register, shall have voted in such election, so far as the same may be disputed on the ground of legal incapacity at the time of his voting, under and by virtue of any statute now or hereafter to be in force, or on the ground of any other legal incapacity at the time of his voting, which may have arisen subsequently to the expiration of the time allowed for making out the lists of voters from which the register of voters in force at the time of such election shall have been formed; but that, except in such cases or on such grounds as aforesaid, the register of voters in force at the time of such election shall, so far as regards the proceedings before such committee, be final and conclusive to all intents and purposes, as to the right to vote in such election of every person who shall be upon such register."<sup>a</sup>

When the inquiry before a committee involves a charge of bribery or treating voters, the subject of agency is one of obvious importance, on which the decisions

<sup>a</sup> As to the results of these several enactments, see Wordsworth's Election Law, 3rd Edition, pp. 223, 224.

of committees have varied in a remarkable degree. The accusing party was frequently called upon, to connect the party whose acts formed the foundation of the charge with the sitting member, before the acts of bribery were gone into. The 4 & 5 Vict. c. 57, enacts, that the committee shall receive evidence of the whole matter whereon it is alleged that bribery has been committed, neither shall it be necessary to prove agency in the first instance, before giving evidence of those facts whereby the charge of bribery is to be sustained. And the committee are required to report, separately and distinctly, upon the facts of bribery proved before them, and wheathe the bribery was committed with the knowledge and consent of the sitting member or candidate. By another recent statute, (the 5 & 6 Vict. c. 102.) to prevent charges of bribery from being compromised or stifled, in all such cases, committees are empowered to examine into the circumstances of the withdrawal, abandonment, or forbearance to prosecute any charge of bribery, and to examine for this purpose, sitting members, candidates, agents, and other persons, and report to the house.

The subject of the costs of election petitions, and the costs and expenses of witnesses summoned to attend thereon, will be treated of in a future article, which will conclude the series relating to election petitions.

## THE LAW RELATING TO ATTORNEYS.

### LIABILITY FOR NEGLIGENCE—AUTHORITY.

OUR original reports have recently furnished our readers with the particulars of two cases, which are so important in reference to the responsibilities and liabilities of attorneys, that we make no apology for again reverting to them.

In the first case,<sup>b</sup> an attorney was retained by the plaintiff to keep alive the right of action on a bill of exchange for 50*l.*, which was overdue six years less six days, and issued a writ of summons on the 1st June, 1833. The debtor, however, kept out of the way and avoided service until the 7th February, 1839. In this long interval the writ was duly continued, except in two instances, in one of which a writ

issued in continuance was brought to the office of the court two days too late, and in the other nineteen days. The defendant in the original action pleaded the Statute of Limitations, and the plaintiff, under the circumstances stated, was nonsuited. He afterwards brought an action against his attorney for negligence, and recovered, not only the amount of the bill and interest from the time it became due, but all the expenses incurred in the abortive endeavour to keep the debt alive, the verdict against the attorney being for 184*l.*, in addition to which he had the costs of two trials to pay. The practice of entering writs to avoid the operation of the Statute of Limitations, originated with the passing of the Uniformity of Process Act, (2 W. 4, c. 39, s. 10,) which enacts, that for this purpose every writ issued in continuation of a preceding writ, "shall be returned *non est inventus*, and entered of record within one calendar month after the expiration thereof." The negligence imputed to the attorney in this case was, that he had not filed the writ, or in other words, brought it to the office of the court in due time, to enable the officer of the court to enter it. The Court of Queen's Bench held that this duty was to be implied from the requisitions of the statute, although not expressed by it in words, and upon this ground the attorney had to pay to his former client, the amount of a debt which it is possible the latter would never have realized by means of a judgment against his original debtor. Upon this case we should only remark, that it seems scarcely reasonable, whilst the emoluments of an attorney are abridged by modern acts of parliament, his responsibilities should be needlessly multiplied. All the purposes of justice seem to have been as well effected when the only proof required was, that a writ had been sued out within the six years, and the return indorsed on it showed it was not served. The entry of a series of writs at intervals not exceeding five months, during a course, perhaps, of several years, throws an unnecessary difficulty in the way of the suitor, and as the instance cited illustrates, a serious responsibility upon the practitioner.

The second case to which we are about to refer, (*Bayly v. Buckland and others*,<sup>c</sup>)

<sup>b</sup> *Hunter v. Caldwell*, (ante, p. 11,) since reported in the August number of the Law Jour.

<sup>c</sup> Determined by the Court of Exchequer in the sittings after Trinity Term last, and reported ante, p. 279. It has since been reported in the Law Jour. p. 204, Exch.

whilst it suggests the expediency of great caution in appearing for clients without an express authority, appears to us to relieve an attorney acting *bona fide*, from some portion of the liability he incurred when an unprincipled client deemed it convenient to repudiate acts done for his benefit. The case, however, is important upon other grounds. It introduces an essential modification in a rule of practice, which seemed objectionable in principle, and might occasionally have been productive of great injustice to individuals. This rule, which has prevailed at least since the time of Chief Justice Holt, is stated in Salkeld's Reports<sup>d</sup> to be, that "where an attorney takes upon himself to appear, the court looks no further, but proceeds as if the attorney had sufficient authority, and leaves the party to his action against him." The rule was afterwards qualified by introducing the consideration, whether the attorney was solvent, for it was said that the remedy against an insolvent attorney who had acted without authority was in fact no remedy, "and any one may be undone by that means." It is quite manifest, however, that the inquiry into the solvency of the attorney must frequently arise at too late a stage to prevent the mischievous consequences arising from his unauthorised acts. A man may be utterly insolvent whilst it is impossible to obtain legal evidence of the fact, or he may be solvent, and yet not worth one hundred pounds in the world; and in either case the remedy against him would be ineffectual. The Court of Exchequer now proposes to modify the rule, by confining the liability of a party for whom an attorney has appeared without authority, to cases in which the course of the proceedings has given him notice of the action being brought against him; but where the plaintiff, without serving the defendant, accepts the appearance of an unauthorised attorney, and proceeds to judgment, the court determined to set aside the judgment as irregular, with costs, leaving the plaintiff to recover those costs and the expense to which he has been put, from the attorney by summary proceeding.

The facts which called for this decision were simple, and not discreditable to any of the parties concerned. The plaintiff brought his action against Messrs. Buckland, Gordon, and others, as shareholders in a brewery company. Buckland, one of

the defendants, who was a managing director, instructed Mr. Leeds of Neath, who had acted as the attorney for the company, to appear for all the defendants, which he accordingly did, and subsequently consented to a judge's order for payment of the debt by instalments. One of the instalments remaining unpaid, the plaintiff issued execution against Gordon, who, up to this time, was ignorant that any action had been brought against him, and upon that ground applied to have the judgment against him set aside. The court, by acceding to the application, and putting the defendant Gordon in *statu quo*, not only did justice so far as he was concerned, but left the attorney, Mr. Leeds, who was admitted to be in solvent circumstances, in a position of greater security than he would have been in had the judgment been sustained, as in that event he would clearly have been liable to an action at the suit of Gordon. As to the plaintiff, it is true he was quite blameless in the transaction, but, as justly remarked by the court, when the judgment was set aside, he had his remedy against the defendant Gordon as before, and suffered only the delay and possible loss of costs. The law required him to give notice to all the defendants by service of the writ, and as he had not served Gordon, as respected him, the plaintiff could not be said to be wholly free from the imputation of negligence.

On the whole, the modification introduced into the rule of practice by this decision appears to be consonant with legal principles, and to put the rule on a sound and reasonable footing.

#### THE LEGAL OBSERVER EDITION OF THE STATUTES OF THE LAST SESSION.

It may be convenient to our readers to be enabled readily to refer to the Statutes effecting Alterations in the Law passed during the last Session, and which have been printed verbatim in the *Legal Observer*. They are as follow:—

	Page.
Drainage of Land, 10 Vict. c. 11 . . .	94
Inclosure of Commons, 10 Vict. c. 25 . . .	120
Removal of Poor, 10 & 11 Vict. c. 33 . . .	313
Abolition of a Mastership in Chancery, 10 & 11 Vict. c. 60 . . . . .	236
Threatening Letters, 10 & 11 Vict. c. 66 . . . . .	286
Custody of Offenders, 10 & 11 Vict. c. 67 . . . . .	287

<sup>d</sup> Anonymous, p. 86.

House of Commons Costs Taxation, 10 & 11 Vict. c. 69 . . . . .	339
Juvenile Offenders, 10 & 11 Vict. c. 82, . . . . .	392
Securing Trust Funds and relief of Trustees, 10 & 11 Vict. c. 96 . . . . .	365
Chancery Affidavit Office, 10 & 11 Vict. c. 97 . . . . .	337
Bankruptcy and Insolvency, 10 & 11 Vict. c. 102 . . . . .	310
Tithes Amendment, 10 & 11 Vict. c. 104 . . . . .	366
Removal of Poor, 10 & 11 Vict. c. 110 . . . . .	414

\*\*\* All the other Statutes of the Session, in any way useful to the profession, will be printed during the Vacation, and followed by notes.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### REMOVAL OF POOR.

10 & 11 VICT. c. 110.

An Act to Amend the Laws relating to the Removal of the Poor, until the First Day of October One thousand eight hundred and forty-eight. [23rd July, 1847.]

1. 9 & 10 Vict. c. 66; *Expenditure incurred by any parish, &c. for maintenance, &c. of persons who are or may be by the above recited enactment exempted from liability, to be charged to the union.* 4 & 5 W. 4 c. 76.—Whereas by an act passed in the last session of parliament, intituled “An Act to amend the Laws relating to the Removal of the Poor,” it was, amongst other things, enacted as follows, “that from and after the passing of this act no person shall be removed, nor shall any warrant be granted for the removal of any person, from any parish in which such person shall have resided for five years next before the application for the warrant; provided always, that the time during which such person shall be a prisoner in a prison, or shall be serving her Majesty as a soldier, marine, sailor, or reside as an in-pensioner in Greenwich or Chelsea hospitals, or shall be confined in a lunatic asylum or house duly licensed or hospital registered for the reception of lunatics, or as a patient in an hospital, or during which any such person shall receive relief from any parish, or shall be wholly or in part maintained by any rate or subscription raised in a parish in which such person does not reside, not being a *bond fide* charitable gift, shall for all purposes be excluded in the computation of time herein-before mentioned, and that the removal of a pauper lunatic to a lunatic asylum under the provisions of any act relating to the maintenance and care of pauper lunatics shall not be deemed a removal within the meaning of this act; provided always, that whenever any person shall have a wife or children having no other settlement than his or her own, such wife and children shall be removable when he or she is re-

movable, and shall not be removable when he or she is not removable:” And whereas the effect of the above-recited enactment has been to increase unduly the amount of expenditure for the relief of the poor in particular parishes: Be it therefore enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That all the expenditure which shall be incurred by any parish, township, or place forming part of a union for the maintenance, relief, or burial of any person or persons who shall have been at any time within one year before the passing of the above-recited enactment in the receipt of relief from some other parish, township, or place, by right of settlement or reputed settlement therein, and who by the above-recited enactment are or may be exempted from the liability to be removed from the parish, township, or place in which such person or persons shall be residing, shall from and after the passing of this act, so long as such person or persons shall continue to be exempted, be charged to the common or general fund of such union in the same manner as the cost of building or providing workhouses in unions and other union expenses are directed to be charged by an act passed in the 4 & 5 W. 4, c. 76, intituled “An Act for the Amendment and better Administration of the Laws relating to the poor in England and Wales.”

2. *Continuance of act.*—And be it enacted, That this act shall continue in force until the 1st day of October, in the year 1848.

3. *Act may be amended, &c.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament.

## LAWYERS IN PARLIAMENT.

To our List of Lawyers (at p. 326) representing *English* boroughs in parliament, we now add those of Ireland and Scotland. The names, so far as stated, we believe, will be found to be correct; but there are a few others which have not yet been ascertained.

### IRELAND.

Anstey, T. C., *Youghal*.  
 Bouverie, Hon. Edw. Pleydell, *Kilmarnock*.  
 Butler, Pierce Somerset, *Kilkenny*, (County)  
 Grattan, Henry, *Meath*, (County).  
 Grogan, Edward, *Dublin*, (City).  
 Guinness, Richard, *Kinsale*.  
 O’Connell, Maurice, *Tralee*.  
 Shaw, Right Hon. Frederick, *Dublin*, (University).  
 Sheil, Right Hon. Richard Lalor, *Dungarvon*.  
 [This includes one member of the English Bar.]

### SCOTLAND.

Craig, Wm. Gibson, *Edinburgh*, (City).  
 Drummond, Henry Home, *Perthshire*.

Dundas, Sir David, Q. C., Solicitor-General, /  
*Sutherlandshire.*  
 Ewart, Wm., *Dumfries.*  
 Loch, James, *Wick District.*  
 Maitland, Thomas, *Kirkcudbright.*  
 M'Neill, Duncan, Dean of the Faculty of  
*Advocates, Argyllshire.*  
 Rutherford, Andrew, *Leith, &c.*  
 Wortley, Hon. Jas. Stuart, Q. C., *Buteshire.*

[This List, it will be observed, includes three members of the English Bar.]

## VACATION VISITS TO THE OLD LAWYERS.

WE purpose from time to time to glean from "the wisdom of our ancestors," some curious statements which, "in the course of our reading," we have met with in the Old Text Works and Books of Practice. What do our readers say to the following, by way of example:—

"William Sheppard, Esquire, author of *The Faithful Counsellor*, or the Marrow of the Law in English, published in 1651, at the Gun, in Ivie Lane, and at the Gun and Three Bibles, at the West end of Pauls! He makes the following curious Dedication to the judges:—  
 'Right Honourable and Reverend Judges. This rude and imperfect piece, being now to pass into the sea of common opinion, shall I be so bold as to present to your selves, and humbly begg of you (as *Ruth* did of *Boaz*,) to cast the skirts of your garments over it, and cover it from the strife and heat of tongues. You know it too well; it is *Dog daies* all the year with those that act or speak any thing to the profit of the present state. Oh, they have a hot time of it, and need more than ordinary adumbration. If I may be so bold, there is all the equity in the world you should overshadow it; who so fit Patron for the Child, as the Parents? twas your unparalell'd industry, and wise care for the good and care of the publick, that animated and gave it life. O happy change! and happy time that yields us such examples, incitements and encouragements! Others gleanings I confess are better than my Vintage, and I am the least able of the Tribe; yet I cannot sit still, but must once more adventure to cast in my mite. Accept, (noble patriots) this little handful of meal, that may perhaps encourage others that have more leisure and ability to present you with a pair of Turtle Doves, or a Lamb. But I know to whom I speak; I must not hold you too long from the publick, that lyeth upon your shoulders, least I give offence. Go on Worthies, go on; do good and great things for that state that wants nothing but age to make it happy. So may the Ancient of daies give success, and so add to your daies, that you may see it Crowned with Religion, Peace, and Plenty, the hearty prayers of your Honors, and his Countreys servant.

WILL. SHEPPARD."

## TABLE OF STATUTES.

10 & 11 VICT.

### PUBLIC GENERAL ACTS.

1. An Act to suspend, until the 1st day of September 1847, the duties on the importation of corn.

2. An Act to allow, until the 1st day of September 1847, the importation of corn from any country in foreign ships.

3. An Act to suspend, until the 1st day of September 1847, the duties on the importation of buck wheat, buck wheat meal, maize or Indian corn, Indian corn meal, and rice.

4. An Act for abolishing poundage on Chelsea pensions.

5. An Act to allow the use of sugar in the brewing of beer.

6. An Act to further encourage the distillation of spirits from sugar in the United Kingdom.

7. An Act for the temporary relief of destitute persons in Ireland.

8. An Act to apply the sum of 8,000,000*l.* out of the consolidated fund to the service of the year 1847.

9. An Act for raising the sum of 8,000,000*l.* by way of annuities.

10. An Act to render valid certain proceedings for the relief of distress in Ireland, by employment of the labouring poor, and to indemnify those who have acted in such proceedings.

11. An Act to explain and amend the Act authorizing the advances of money for the improvement of land by drainage in Great Britain.

12. An Act for punishing mutiny and desertion, and for the better payment of the army and their quarters.

13. An Act for the regulation of her Majesty's royal marine forces while on shore.

14. An Act for consolidating in one act certain provisions usually contained in acts for constructing or regulating markets and fairs.

15. An Act for consolidating in one act certain provisions usually contained in acts authorizing the making of gasworks for supplying towns with gas.

16. An Act for consolidating in one act certain provisions usually contained in acts with respect to the constitution and regulation of bodies of commissioners appointed for carrying on undertakings of a public nature.

17. An Act for consolidating in one act certain provisions usually contained in acts authorizing the making of waterworks for supplying towns with water.

18. An Act to indemnify such persons in the United Kingdom as have omitted to qualify themselves for offices and employments, and to extend the time limited for those purposes respectively until the 25th day of March 1848.

19. An Act to raise the sum of 18,310,700*l.* by exchequer bills, for the service of the year 1847.

20. An Act to authorize the application of certain sums received on account of the fees

97. An Act for the discontinuance of the attendance of the Masters in Ordinary in the High Court of Chancery in the public office, and for transferring the business of such office to the affidavit office in Chancery.

98. An Act to amend the law as to ecclesiastical jurisdiction in England.

99. An Act to authorize a further advance of money for the relief of destitute persons in Ireland.

100. An Act to regulate the superannuation allowances of the constabulary force in Ireland and the Dublin metropolitan police.

101. An Act to continue the copyhold commission until the 1st day of October 1850, and to the end of the then next session of parliament.

102. An Act to abolish the Court of Review in Bankruptcy, and to make alterations in the jurisdiction of the Courts of Bankruptcy and Court for Relief of Insolvent Debtors.

103. An Act to amend the Passengers Act, and to make further provision for the carriage of passengers by sea.

104. An Act to explain the Acts for the commutation of tithes in England and Wales, and to continue the officers appointed under the said acts until the 1st day of October 1850, and to the end of the then next session of parliament.

105. An Act to continue until the 1st day of October 1848, and to the end of the then next session of parliament, certain turnpike acts.

106. An Act to provide additional funds for drainage and other works of public utility in Ireland, and to repeal an act of the last session, for authorizing a further issue of money in aid of public works of acknowledged utility.

107. An Act to apply a sum out of the consolidated fund, and certain other sums, to the service of the year 1847, and to appropriate the supplies granted in this session of parliament.

108. An Act for establishing the bishopric of Manchester, and amending certain Acts relating to the ecclesiastical commissioners for England.

109. An Act for the administration of the laws for the relief of the poor in England.

110. An Act to amend the laws relating to the removal of the poor, until the 1st day of October 1848.

111. An Act to extend the provisions of the Act for the inclosure and improvement of commons.

112. An Act to promote colonization in New Zealand, and to authorize a loan to the New Zealand Company.

113. An Act to facilitate the drainage of lands in Scotland.

114. An Act for improving the harbour and docks of Leith.

115. An Act to vary the priorities of the charges made on "The London Bridge Approaches Fund."

## COUNTY COURT ACT.

*To the Editor of the Legal Observer.*

SIR,—In the month of July last I paid a visit to Ipswich professionally, for the purpose of appearing on behalf of a defendant, under the County Court Act. The judge of that court refused to permit my appearance on behalf of the defendant:—stating, as I was informed by the clerk of the court, that he could not hear any article clerk on any question whatever.

Now, Mr. Editor, article clerk is permitted to appear on behalf of their employers in the district courts of London and Middlesex, and I would ask, why should they be ejected from the court at Ipswich?

I firmly believe that an article clerk of four years standing is fully as equal to the task of managing a case as a young barrister who has gone through the usual ordeal of three years, previous to being called to the bar, and who would, no doubt, obtain a ready audience.

E. C.

## BARRISTERS CALLED.

*Easter Term, 1847.*

### LINCOLN'S INN.

Louis Henry Shadwell, Esq.  
The Hon. William H. Stuart.  
William Henry Hearing, Esq.  
John Vincent, Esq.  
George Jessel, Esq.  
Leonard Francis Burrows, Esq.  
Charles William Strickland, Esq.  
Henry Waterland Mander, jun., Esq.  
George Rastrick, Esq.  
Douglas Brown, Esq.  
Robert Milnes Newton, Esq.  
Ralph Robert Lingen, Esq.  
John Edward Woodroffe, Esq.

### INNER TEMPLE.

30th April.

Francis Frederic Brandt, Esq.  
James Richard Holligan, Esq.  
Egidius Benedictus Watermeyer, Esq.  
James Burchell, jun., Esq.  
Edward Vaughan Richards, Esq.  
Henry Edward Francis Lambert, Esq.  
Thomas Paefrey Broadmead, Esq.

7th May.

Alexander Walker Macher, Esq.  
John Gardner, Esq.  
Charles Joseph Parke, Esq.  
Martin Joseph Routh, Esq.  
John Copner Wynne Edwards, Esq.  
Littleton Powys, Esq.

### MIDDLE TEMPLE.

16th April, 1847.

John Joseph Powell, Esq.  
James Septimus Barrett, Esq.  
John George Holloway, Esq., B. A., Trin.  
Coll., Cambridge.

Charles Cave John Orme, Esq.  
Francis Davenport Bullock Webster, Esq.  
George Andrew Wright, Esq., B. A., Exeter  
Coll., Oxford.  
Thomas Dorning Hibbert, Esq.

7th May, 1847.

George Croxton, Esq., late of Gouville, and  
Caius Coll., Cambridge.  
William Adam Mundell, Esq.  
Alexander Mackay, Esq.  
Bernard Hale, Esq.  
Sydney Whiting, Esq.  
Henry Dias, Esq.  
Francis Webb, Esq.  
Richard Morris, Esq.  
Richard Bethell, Esq., B. A., Exeter Coll.,  
Oxford.  
John Jane Smith Wharton, Esq., St. Mary  
Hall, Oxford.  
Thomas Heathcote Bayly, Esq.

GRAY'S INN.

21st April.

Edward Crispe Ellery, Esq.

28th April.

Edward Joseph Powell, Esq.  
Peter Borthwick, Esq.  
William Folk Higgins, Esq.

1st May.

Edward Kenealy, Esq.

*Trinity Term, 1847.*

LINCOLN'S INN.

Edward Leigh Pemberton, jun., Esq.  
Alfred Coope, Esq.  
Richard Bawtree Turner, Esq.  
Thomas Andrew Lester Marsden, Esq.  
Samuel Brownlow Gray, Esq.  
William Newton Warren, Esq.  
Ebenezer Kay, Esq.

MIDDLE TEMPLE.

28th May, 1847.

John Thadeus Delane, Esq., M. A., Mag-  
dalen Hall, Oxford.  
George Edward Engleheart, Esq.  
Charles Octavius Boys, Esq.  
Robert John Walcott, Esq.  
Alfred Erasmus Dryden, Esq., M. A., Trin.  
Coll., Oxford.  
George Loch, Esq.  
Alexander Fitzjames, Esq.  
Thomas Rawlinson, Esq.

11th June, 1847.

James Brotherton, Esq.  
Charles Hill, Esq.  
William James Hall, Esq.  
Henry Fox Bristowe, Esq.  
Isaac John Walker, Esq., Brasenose Coll.,  
Oxford.  
Albert Mott, Esq., B. A., University of  
London.  
Frederic Smith, Esq., B. A., St. John's Coll.,  
Oxford.

John Clarke Searle, Esq.  
Peter Henry Edlin, Esq.  
Thomas Steele, Esq., Trin. Coll., Dublin.  
Archibald Campbell Barclay, Esq.  
John Towne Danson, Esq.  
William Frederick Palmer Morewood, Esq.,  
B. A., Ch. Ch., Oxford.  
George Lawson, Esq., B. A., St. John's Coll.,  
Cambridge.  
John Henry Dillon, Esq.  
Benjamin Richard Aston, Esq.  
Francis Prix Fortier, Esq.

INNER TEMPLE.

11th June.

Springall Thompson, Esq.  
Edward Hoare Sirr, Esq.  
Charles Frith, Esq.  
The Hon. Frederick William Cadogan.  
Elliot Grasset, Esq.  
William Henry Leathley, Esq.  
Samuel Stephen Bateman, Esq.

GRAY'S INN.

9th June.

Richard Edward Arden, Esq.  
Matthew Combe, Esq.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

*Lord Chancellor.*

*Newton v. Ricketts.* August 5th, 1847.

INJUNCTION AND APPOINTMENT OF RECEIVER DURING LITIGATION IN THE ECCLESIASTICAL COURT.—ALLEN v. MACPHERSON.

*The court will not grant an injunction or appoint a receiver in respect of a testator's assets merely on the ground that a suit has been commenced in the Ecclesiastical Court for the purpose of recalling the probate granted to the executor named in the will; but special circumstances must be shown.*

Mr. Newton moved for an injunction to restrain the executors of his wife's father from dealing with certain stock, part of the testator's estate; and also moved for the appointment of a receiver of the said stock. The grounds for the motion were, that a suit between the plaintiffs and defendants was pending in the Probative Court, the object of which was to recall the probate granted to the said executors, which probate, according to the practice of that court, had been brought in and deposited by the latter. The Master of the Rolls had refused this motion, but upon the representation that the executors intended to transfer the stock in question, had remarked, that it would not be prudent for executors and trustees so to deal with it during the litigation in the Ecclesiastical Court. Reference was made at great length to



the following cases, and the authorities which they respectively cite :—*Andrews v. Powys*, 2 Bro. P. C. 504, (Toml. Edn.) ; *King v. King*, 6 Ves. 172 ; *Atkinson v. Henshaw*, 2 Ves. & Bea. 85 ; *Rutherford v. Douglas*, 1 Sim. & Stu. 111, N. O. ; *Bull v. Oliver*, 2 Ves. & Bea. 96 ; *Watkins v. Brent*, 1 Myl. & Cr. 97 ; *Connor v. Connor*, (infra) ; *Rex v. Butterby*, R. & R. Crown Cases ; and *Allen v. Macpherson*, 1 Phil. 133, (affirmed on appeal to the House of Lords, on the 20th of July last, the Lord Chancellor and the Master of the Rolls dissenting from the judgment of Lords Lyndhurst, Brougham, and Campbell). Upon the latter case being cited as an authority which decided that the Court of Chancery had no jurisdiction to inquire into the circumstances affecting the validity of certain codicils to a will, his lordship remarked, that the case decided no such point. The question there was, whether a trust attached to a legacy. Nobody doubted that the Ecclesiastical Court had exclusively jurisdiction to inquire into the granting of a probate. The question there was, whether, under the circumstances of that case, a trust had been attached to a certain legacy by reason of the conduct of the parties.

Mr. Roupell, Mr. Rolt and Mr. Robson, who appeared for the several defendants, were not required to be heard.

The Lord Chancellor. In this case there is no allegation against the responsibility of the parties, but it rests entirely on the proceedings in the Ecclesiastical Court. In *Watkins v. Brent*, (supra,) I expressed the principle which I followed in *Connor v. Connor*, (infra,) that the court will not as of course interfere with property duly possessed by executors or administrators. I have considered all the cases which have been quoted, and every one confirms that principle. If special circumstances are shown, then according to the peculiarity of the case, the court will interfere by injunction or by the appointment of a receiver, if it thinks that the property will not be safe in the hands of those to whom the Ecclesiastical Court has confided it. *Andrews v. Powys*, (supra,) came on upon demurrer, and therefore all the facts stated in the bill were taken to be true. In *King v. King*, (supra,) there was no probate, and therefore the application was granted as of course. In *Atkinson v. Henshaw*, (supra,) there was likewise no probate, and it was also argued on demurrer. *Rutherford v. Douglas* (supra) was a case of fraud, and *Bull v. Oliver* (supra) was a case of insolvency. In *Watkins v. Brent*, (supra,) no person had probate, the executrix who alone had proved having died intestate. There is no case *simpliciter* in which probate having been granted and a suit instituted to withdraw it, this court has interposed. There must be a specific case made to induce this court to interfere. Here the Ecclesiastical Court has merely called in the probate, but it has not yet decided anything, and no witnesses have been examined. No case has been produced, notwithstanding the research of the learned gentleman, which is an authority for

granting his application, and I therefore think that the motion must be refused with costs.

*Connor v. Connor.* June 19, 1847.

Mr. J. Parker and Mr. Prior moved, on behalf of the defendants, to discharge an order of the Vice-Chancellor of England, restraining her until the bill should have been answered or further order of the court, from transferring stock, and from interfering with assets obtained and possessed by her, belonging to her son, who had died intestate, and to whose estate she had administered. The plaintiff, claiming to have been the wife of the deceased, instituted a suit in the Ecclesiastical Court against the defendant and others, and the letters of administration which had been granted were called in by the Ordinary. Under these circumstances, the Vice-Chancellor had granted the injunction now sought to be discharged. They cited *De Feuchères v. Dawes*, 5 Beav. 110.

Mr. Roupell and Mr. Anderson, in support of his Honour's order, were stopped by

The Lord Chancellor, who having remarked that the court would not interfere by injunction or otherwise, where there was no allegation against the responsibility of the parties to whom the proper Ecclesiastical Court had confided administration, suggested that the fund should be brought into court.

Mr. J. Parker having consented to this arrangement, his Honour's order was discharged without costs.

#### Rolls Court.

*Gordon v. Lowe.* July 18th, 1847.

#### ROLLS PAPER.—TRANSFER OF CAUSE.

*A cause cannot be transferred from the Lord Chancellor's paper into that of the Master of the Rolls by an order of the Lord Chancellor only, without an order of the Master of the Rolls.*

Mr. Miller applied for an order for a receiver, in a cause which he stated to have been transferred by an order of the Lord Chancellor from the Vice-Chancellor of England's paper to that of his lordship, the object of the transfer being, that the cause might be heard with another cause in his lordship's paper.

But Lord Langdale said, that no such transfer could be made without his order. In former times there had been much dispute about the independence of the court. He set but little store upon that, but he must proceed regularly. He would make the order for the transfer at once.

#### Vice-Chancellor of England.

*Langston v. Cozens.* August 4th, 1847.

#### CUSTODY OF INFANT.

*Where the custody of an infant of 12 years of age is sought to be obtained by a parent, Held, that the wishes of the child as to his parental residence should be ascertained.*

IN this case Mr. Langston had for some years been living separately from his wife; a suit had been instituted in the court in the progress of which an order had been made directing Mr. Langston to have the custody of his only son, a boy of 12 years of age. His son remained with him until June last, when, of his own accord, he went to his mother and remained with her ever since, she refusing to give him up. Mr. Langston now presented a petition praying that his wife might be ordered to deliver him up and pay the expenses occasioned by her detaining the child, and also the costs of this petition, out of her separate property.

Mr. Roe and Mr. Hoare appeared in support of the petition.

Mr. J. Parker and Mr. L. Russell contra.

The Vice-Chancellor said, that he should like to have the child brought into court in order that he might himself ascertain whether he was desirous of living with the father or the mother. In a case that had been decided before him not long since, where a boy was between 12 and 14 years of age, he had been of opinion that the wishes of the child should be consulted. The boy having been brought into court, and the Vice-Chancellor having conversed with him, said, he should direct that the child remain with his mother until further order, but that he would make no order as to the costs.

#### Vice-Chancellor Knight Bruce.

*Coombe v. Chapman.* January 23rd, 1847.

PRACTICE IN THE MATTER OF THE ACT 11 GEO. 4, AND 1 W. 4, C. 47.—INFANT.

*Conveyance by infant ordered, without reference to the Master.*

IN this suit, which was for the administration of the estate of a testator who had devised his freehold property to an infant, the purchaser of the property presented a petition under the above statute, praying that the infant might be ordered to convey to him.

*Shapter* for the petition.

The Vice-Chancellor made the order without a reference to the Master, as in such a case there could be no necessity for a previous inquiry.

#### Queen's Bench.

(Before the Four Judges.)

*The Queen v. The Justices of Carmarthenshire.* Trinity Term, 1847.

MANDAMUS.—CORONER.—INQUESTS.—FEES.

*Where justices at quarter sessions had refused to allow a coroner his fees and disbursements in respect of two inquests, on the ground that the inquests had been improperly held, the court, on application for a mandamus to the justices to allow such fees and disbursements; Held, that they*

*would not interfere with the discretion exercised by the justices with respect to the fees due to the coroner as remuneration for his own trouble, but made the rule absolute for the repayment of the sums of money which had been disbursed by the coroner.*

AT the quarter sessions held on the 8th of April, 1847, the justices for the county of Carmarthen made an order disallowing the whole of the fees and disbursements incurred and expended by one of the coroners for the county of Carmarthen incurred in holding two inquests. It appeared from an affidavit made by the coroner that, on the 2nd of February last, he received information from one of the superintendents of the police force of a sudden and accidental death at a place about ten miles from his place of residence, and that he considered it his duty to inquire into the cause of the said death. It appeared one John Young had died of a lock-jaw in consequence of having had his fingers chopped off by a chaff-cutter, that the deceased had been dependent on parish relief, and was under the medical care of the surgeon of the union, who, it was said, had not treated the deceased with due skill and attention. At the request of the jury, the surgeon was called, but it did not appear from the evidence that any misconduct or want of attention could be imputed to the medical man, and the jury found that the deceased died of a lock-jaw produced by injuries to his fingers caused by a chaff-cutter. On the 22nd of January the coroner was informed by a police constable of the death of a child who had been burnt to death in consequence of her clothes having caught fire. The death took place about 11 miles from the residence of the coroner, and, from the information he received, he considered it to be his duty to hold an inquest. The jury found that the deceased had been accidentally burnt to death. The coroner paid all the reasonable expenses incurred in and about holding both inquests, amounting to 2*l.* 10*s.*, part of which was paid for the attendance of the medical witnesses, and the remainder to the jury and for the use of the rooms where the inquests were held; and according to a table of fees and disbursements allowed by the magistrates he claimed altogether the sum of 7*l.* 3*s.* 8*d.*, which the justices at sessions disallowed on the ground that they did not consider either of such inquests necessary.

IN Easter Term last a rule *nisi* was obtained calling upon the justices in quarter sessions for the county of Carmarthen to show cause why they should not pay to the coroner certain fees, and repay him certain disbursements, payable to him in respect of the inquests held on the bodies of John Young and Mary John.

The Attorney-General (Sir J. Jervis) and Mr. Crompton showed cause, and relied upon the case of *Rex v. The Justices of Kent*,<sup>a</sup> where the justices had refused to allow the costs of an inquest on the ground that it had been improperly taken, and a mandamus was applied

for, but the court said that the statute 25 Geo. 2, c. 29, had directed that the fees should be allowed to the coroner for all inquisitions duly taken, and the justices were to judge whether the inquisition had been duly taken, and as there was no reason for imputing to them that they had exercised that judgment with any undue bias, the court refused to interfere.

Mr. Pashley contra. The case of *Rex v. The Justices of Kent*, is not conclusive. In *Rex v. The Justices of Warwick*,<sup>b</sup> the court did review the decision of the justices. The coroner, in the exercise of a discretion vested in him, deemed it necessary to hold these inquests. The inquests, therefore, were "duly taken," according to the words used in the 25 Geo. 3, c. 29, s. 1, and the duty of the justices is to see that the coroner does not charge a greater amount of fees than what the legislature has allowed, but they cannot altogether refuse the fees of an inquest which has been duly taken. *Rex v. The Justices of Norfolk*.<sup>c</sup> They cannot, at all events, refuse to repay him the sums he has expended. If a coroner neglects to perform his duty, or performs it in an improper and corrupt manner, the law has provided ample remedies. He is liable to fine and imprisonment for neglect of duty.<sup>d</sup> He may be punished by criminal information, and the great seal has power to remove him from office for neglect of duty. *Ex parte Parnell*.<sup>e</sup>

*Cur. ad. vult.*

Lord Denman now delivered the judgment of the court. There were two questions for consideration; first, whether when a coroner holds an inquest and pays certain sums to medical men and other parties, the quarter sessions has any discretion as to allowing or disallowing him his fees and expenses, and remuneration for the sums he has expended. Secondly, whether, if the court of quarter sessions has this discretion, this court has any controlling power over the quarter sessions in the exercise of that discretion. As to the first question, it is unnecessary to go into the ancient law of coroners, for the present payments to them depend on modern statutes of which the 25 Geo. 3, c. 29, is the first. That statute enacted, that in order to induce a coroner to do his duty he should have certain fees, which it then set forth, and his mileage paid. The legislature contemplated a reward for services rendered. Two cases are provided for, those of persons dying in prison, where the sum to be paid to the coroner is fixed, and those of persons dying at a distance where the mileage is to be ascertained. In both cases the legislature contemplated a reward for holding the inquest, but in both it spoke of an inquest being duly taken. The fact that it was duly taken seemed to be a condition precedent to entitle the party to the reward. If the payments are to be made without any control, and without consideration whether the inquisition was duly held, it might be dishonestly held, and there might be negli-

gence in taking it, while the existence of the right to control secures not only care and diligence in taking the inquest, but also that inquests shall only be taken where it is proper to take them. That was the view taken many years ago by this court in the case of *Rex v. The Justices of Kent*,<sup>f</sup> with which this court at this moment entirely concurs. If that is correct, it is obvious that in the present case the justices in sessions must exercise a discretion in determining whether the coroner's conduct was such that an order for payment should be made. But then the second question arises, whether this court would interfere with what is thus clearly within their jurisdiction. The statute gives no appeal to this court, and there is no appeal from the quarter sessions, unless it were given by statute. That rule of law is a beneficial one. Whether an inquest has been properly taken depends on a variety of circumstances which it would be impossible to judge of by affidavits, and might be much better inquired of at the sessions than on motion in this court. Assuming the absence of corruption, the bias which it is supposed justices would as ratepayers entertain on such a subject is not likely to prevent them coming to a more correct conclusion than this court would hope to arrive at upon affidavit. If there was any ground to say that they were chargeable with corruption, no doubt there is an inherent power in this court to compel them to do justice; but, without expressing entire concurrence in the decision of the justices here, the court see no occasion to interfere with it. But it has been contended that, whatever the sessions might do as regards the coroner's own remuneration, yet as regards the sums he has expended they were compulsory on him, and he is entitled to be reimbursed them, and the sessions had no discretion. As to the fees of a surgeon, of a bailiff, of the jury, and the sum paid for the room, and to witnesses, some payable under the old practice, and some under a recent statute, the coroner is compelled to pay them immediately after the termination of the proceedings, and the statute says that these sums so advanced shall be repaid to the coroner. The coroner was to render his account to the sessions, and the justices, if satisfied of its correctness, are to make an order for payment of the amount. Perhaps some distinction may exist between the fees of the coroner himself and the expenses incurred by summoning medical witnesses, and some other witnesses, on the score of the necessity of the latter. The propriety of requiring the attendance of medical witnesses at an inquest is so unquestionable as to amount to a necessity, and these expenses may be classed among the necessary expenses of every inquest. Although the justices are empowered to examine the coroner on oath, that power seems rather to apply to the rate of the sums charged than to anything else. There are many parties who are bound to obey the coroner's mandate for

<sup>b</sup> 5 Barn. & Cress. 430. <sup>c</sup> Nolan R. 140.

<sup>d</sup> 2 Hale's P. C. 58. <sup>e</sup> 1 Jac. & Walker, 451.

their attendance; and their remuneration certainly would not depend on the propriety of holding the inquest. In former times these sums were paid upon the order of the coroner, and out of the poor-rates. When the coroner was not the person who actually paid these charges, but they were paid on his order, it is clear that the overseers could not resist the payment merely on the grounds that he had not held the inquest properly; for his own authority in these matters was so great, that in most cases it would have been impossible to charge him with indiscretion in holding an inquest. If that statement was true before the statute, it is not altered now from the mere circumstance that, instead of ordering the payment of expenses to those whom he summoned to attend him, he pays them at once out of his own pocket, and claims reimbursement from the county. In this respect he is the agent of the county treasurer; and as he is bound to pay, he is entitled to be repaid by the justices on their being satisfied of the correctness of his account. This is in accordance with the spirit of the statute. All temptation to hold unnecessary inquests is destroyed by making his own remuneration depend on the propriety of his holding them; but he might be prevented from holding them where they were necessary, if he was not merely likely to lose all remuneration for his own trouble, but to be out of pocket for the payment of those whom he has summoned to attend him, and for those other expenses which are necessarily and unavoidably incurred in such a case. The rule as to the allowance of his own fees will therefore be discharged; and as to the other part, it will be absolute.

Rule accordingly.

### Exchequer.

*Good v. Burton.* Trinity Term, 2nd June, 1847.

#### UNPAID VENDOR.—LIEN.—TITLE DEEDS.

*The vendor of an estate who has conveyed it to the purchaser has no lien on the title deeds for the purchase money remaining unpaid.*

THIS was an action of detinue for certain title deeds. The defendant pleaded that the deeds exclusively related to certain lands and hereditaments of the defendant, which, before the alleged detention in the declaration mentioned, it was agreed between the defendant and the plaintiffs, should be sold, transferred, and conveyed by the defendant to the plaintiffs, and should be by them purchased from the defendant for the sum of 1,000*l.*; that the defendant executed a conveyance to the plaintiffs, but no part of the purchase money was ever paid; that the defendant has at all times been ready and willing to transfer and deliver over to the plaintiffs the deeds upon payment of the purchase money; and that, except as aforesaid, the plaintiffs never had any title to the deeds; and that the defendant detains the deeds as a lien for the purchase money. To this plea there was a demurrer.

*Peacock* in support of the demurrer. The question is, whether the vendor of land who has conveyed the legal estate to the vendee has any lien upon the title deeds for the purchase money remaining unpaid. It is submitted that he has not. The case is altogether different from that of an unpaid vendor of goods. There the law gives a lien upon the goods, but with respect to land, the right to the title deeds follows the land. If the vendee brought an action of ejectment, it would be no answer to say that he had not paid the purchase money.

*Whitehurst*, contra. The defendant has clearly a right in equity, and there is no difference between an equitable lien and a legal lien. All the authorities are collected in 2 Sugden Vend. & Purch. 856, 11th ed. There is no ground for any distinction between goods and land. In *Esdaile v. Oxenham*, 3 B. & C. 229, which was an action of trover for deeds, Holroyd, J., says,—“If, indeed, the deeds had been executed by all the necessary parties, the plaintiff could not have claimed them without tendering the residue of the purchase money.” In that case a bill was afterwards filed in this court, and it was there held that the rules with respect to lien are the same in equity as at law. *Oxenham v. Esdaile*, 2 Y. & Jer. 493; 3 *id.* 262. The case of *Winter v. Lord Anson*, 3 Russell, 488, is also in point.

*Peacock* replied.

*Cur. ad. vult.*

*Rolfe*, B., (after stating the pleadings). There is no doubt that the title deeds of an estate *prima facie* belong to the owner. This is always stated and admitted in all the cases and text books as clear law, (see particularly *Lord Buckhurst's case*, 1 Co. Rep. 1, and Com. dig. Charter A). In all the cases where any question has been raised on this subject the argument has been, not that the general rule does not exist, but that on some special ground it is not applicable to the particular case,—as, for example, where the feoffee is enfeoffed with warranty, there it is said that the feoffor shall retain the title deeds to enable him to sustain the warranty. The only authority against this is a passage there cited from Brookes's Abridgment, tit. Chart. 58, as to which we can only say that it must have been written with reference to something special, for as a general proposition of law, it is clearly not to be supported. It follows, therefore, that the plaintiff appearing as he does on these pleadings to be the owner of the land, is also entitled to the title deeds, unless there be something in the plea to cut down his *prima facie* right. The defendant rests his defence on a claim of lien for payment of the purchase money. He does not allege that the conveyance to the plaintiff was not an absolute and complete conveyance. He does not suggest that it was executed as an escrow, or under any special contract for a lien, so that the defendant's right, if it exists at all, must exist by virtue of some general principle of law which in every case where a vendor has conveyed his estate without receiving the full

amount of his purchase money creates in his favour a lien on the title deeds for the balance unpaid. The only dictum relied on is what fell from Holroyd, J., in the case of *Esdaile v. Owenham*, but that was altogether extrajudicial, and may be well explained on the supposition that Mr. Justice Holroyd was looking to a case where the purchase deeds had been executed merely as an escrow to be handed over on payment of the purchase money, in which case the expressions attributed to that learned judge would be quite accurate. It was argued, if such a lien exists in equity, why is it not to be considered as also existing at law? That, however, is rather plausible than sound. There is no resemblance between the lien contended for in this case and the equitable lien of a vendor for his unpaid purchase money. The equitable right of the vendor is inaccurately described by the word lien, if that word is to be understood in its legal acceptation, which always implies possession by the party setting up the lien. But the vendor's right in equity is altogether independent of his possession of the land or of the deeds. He has what, though called a lien, is in truth an equitable charge on the land, and which in general he may enforce in the same way as any other equitable mortgage. On these grounds we think there must be judgment for the plaintiff.

Judgment for plaintiff.

## ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

### Common Law Courts.

#### CONSTRUCTION OF STATUTES.

[In the last section of the Digest, p. 402, *ante*, the Decisions relating to Railways were selected from the rest. We now proceed to the cases bearing on the Construction of various Statutes. They have been collected from no less than Eleven Parts of the Reports in the Queen's Bench, Common Pleas, Exchequer, and Exchequer Chamber.]

#### BANKRUPT.

1. *Rights where a first execution on judgment upon warrant of attorney is set aside.*—*B.* entered up judgment on a warrant of attorney, and sued out a *fi. fa.*, under which the sheriff seized. *W.* afterwards lodged a *fi. fu.* with the same sheriff in a *bond fide* adverse action against the same debtor; and the sheriff delivered a warrant in *W.*'s action, to the officer already in possession. The goods seized were sufficient only to satisfy *B.*'s execution. Before any sale, a fiat in bankruptcy issued against the debtor. The assignees claimed the goods; and, on an interpleader rule, the court of Queen's Bench directed an issue between *B.* and the assignees, to try whether *B.* was entitled to the proceeds of the goods, which, by direction of the court, were in the meantime sold, and the produce paid into court. The

issue was decided in favour of the assignees, on the ground that *B.*'s writ was founded upon a judgment on warrant of attorney, and had not been executed by sale before the fiat. *Held*, that the issuing of the fiat rendered *B.*'s writ void; and thereupon, *W.*'s writ, having already attached upon the goods provisionally, became in effect the first writ, and *W.* was entitled to have his execution satisfied out of the proceeds; and that the assignees could not first claim any part of them under stat. 6 Geo. 4, c. 16, s. 108, for rateable distribution among the creditors.

The sheriff, while holding the goods of *T.* and *G.* under *B.*'s writ, received a *fi. fa.* at the suit of *L.* in a *bond fide* adverse action, and delivered a warrant under that writ to an officer not holding any warrant under *B.*'s writ; and the officer, before fiat issued, seized goods, the separate property of *T.*, in his private house, which goods, if applicable to *B.*'s execution, would have been exhausted by it. *Held*, as between *L.* and the assignees, that *L.* was entitled to priority, as in the case above stated. *Graham v. Lynes; Graham v. Witherby*, 7 Q. B. 491.

Cases cited in the judgment: *Goldschmidt v. Hamlet*, 6 M. & G. 187; 6 Scott, N. R. 962; 12 Law J., N. S. (C. B.) 304; 1 D. & L. 501; *Taylor v. Taylor*, 35 B. & C. 392; *Notley v. Buck*, 8 B. & C. 160; *Rybot v. Peckham*, 1 T. R. 731, n.; *Cheston v. Gibbs*, 12 M. & W. 111.

2. *Creditor accepting security.*—*Cognovit.*—The 6 G. 4, c. 16, s. 8, forfeits the debt of a party striking a docket, and afterwards accepting a security, only where a commission issues under the docket. Therefore, the debt is not forfeited as respects the assignees of subsequent creditors appointed under a commission issued on a docket subsequently struck.

The defendant being indebted to the plaintiff and other parties, and having become insolvent in May, 1837, it was agreed between the plaintiff and the defendant, that the defendant should offer a composition of 10s. in the pound to his other creditors, but that the plaintiff should not come in under that arrangement, it appearing that otherwise the defendant's assets would produce a much smaller dividend. The plaintiff struck a docket against the defendant to protect him against such of his creditors as would not agree to the composition, but no fiat was issued. The creditors, however, all came in, and a trust-deed was executed in December, 1837, under which they received between that time and the August following, the full amount of 10s. in the pound on their respective debts. In September, 1838, the plaintiff brought the present action against the defendant, who, on the 29th of September, gave a cognovit. On the 17th of October following, judgment was signed upon it; and in December, 1845, a *fi. fa.* was sued out, and the defendant's goods were seized. On the 28th Feb., 1846, a fiat in bankruptcy issued against the defendant: *Held*, on motion by the assignees to set aside the judgment and execu-

tion, that the debt was not forfeited under the 6 G. 4, c. 16, s. 8.

A *cognovit* upon which judgment is signed within 21 days after its execution is valid, notwithstanding that it has not been filed in pursuance of the 3 G. 4, c. 39, s. 3, or the Reg. Gen. H. T. 2 & 3 G. 4. *Bushell v. Boord*, 4 D. & L. 359.

#### BIGAMY.

*Assigning error by attorney.*—In an indictment for bigamy under statute 35 G. 3, c. 67, s. 1, (and see stat. 9 G. 4, c. 31, s. 22,) averments that the defendant married *A.*, and afterwards feloniously took to wife and was married to *C.*, “the said *A.*, his former wife, being then alive,” sufficiently charges the offence, without alleging any further allegation that the defendant was still married to *A.* when the alleged offence was committed.

Judgment, after conviction on such indictment, that the defendant be transported, &c., to such place as his Majesty, with the advice of his privy council, shall think fit to declare and appoint, pursuant to the statute in such case made and provided, was held good on writ of error. *Murray v. The Queen*, 7 Q. B. 700.

Case cited in the judgment: *Fletcher v. Calthrop*, 6 Q. B. 880.

#### BOND.

*Staying proceedings in action.*—The court will not interfere, under the stat 4 & 5 Anne, c. 16, s. 13, to stay the proceedings in an action upon a bond, where it is at all doubtful that the payment stipulated by the condition, is not subject to a contingency. *Robinson v. Brown*, 3 C. B. 54.

#### CENTRAL CRIMINAL COURT.

*Jurisdiction of Court of Queen's Bench.*—*Recognizances.*—In a prosecution at the Central Criminal Court for publishing a libel, it is not necessary, for the purpose of giving jurisdiction, that the prosecutor should have entered into recognizance, or that the defendant should have been in custody or be bound to appear, according to sect. 13 of stat. 4 & 5 W. 4, c. 36. *Reg. v. Gregory*, 7 Q. B. 274.

#### COAL ACT.

The London Coal Act, 1 & 2 W. 4, c. lxxvi. s. 57, imposes a penalty not exceeding 5*l.* on the seller of coals, for every sack that shall be found deficient, on its being weighed in pursuance of the act: *Held*, that where several sacks are sent out to a purchaser at the same time under a contract, one penalty only is incurred in respect of a deficiency in weight, though every sack is so deficient; and therefore, where 17 sacks were so found deficient, that the penalties were recoverable by action of debt in one of the superior courts, notwithstanding s. 77, which directs that all penalties by the act not exceeding 25*l.*, shall be levied and recoverable before justices of the peace. *Collins v. Hopwood*, 15 M. & W. 459.

Case cited in the judgment: *Reeve v. Poole*, 4 B. & C. 185.

#### COGNOVIT.

See *Bankrupt*, 2.

#### CONVEYANCE.

See *Feme Covert*.

#### CONVICTION.

7 & 8 G. 4, c. 29.—*Jurisdiction of justices.*—*Adjudication of costs.*—An information, under 7 & 8 G. 4, c. 29, s. 39, for stealing a growing ash tree, the property of *M.*, was preferred by *R.* to *D.*, a justice of the peace, who summoned the offender. At the time and place fixed in the summons, he appeared, and was convicted by another magistrate, the defendant *D.*, the summoning magistrate, being present, but not taking any part. The conviction ordered the plaintiff “to forfeit and pay, over and above the value of the tree stolen, the sum of 5*s.*, and for the value of the tree stolen 1*s.*, and also to pay the sum of 1*l.* 4*s.* 6*d.* for costs, to be paid on or before the 19th of March next, and in default of payment of the said sums to be imprisoned in the house of correction,” at, &c., “and there kept to hard labour for one month, unless the said sums should be sooner paid.” It then ordered the 5*s.* to be paid to the overseer, the 1*s.* to *M.*, the party aggrieved, and the 1*l.* 4*s.* 6*d.* to be immediately paid to *R.*, the complainant. An action of trespass and false imprisonment having been brought against the defendant: *Held*, that the conviction was good, notwithstanding it had not proceeded on the information of the party aggrieved, or been made by the magistrate who received the original information and issued the summons on which the defendant appeared; nor was it invalidated by its mode of adjudicating the costs. *Tarry v. Newman*, 15 M. & W. 645.

#### COPYRIGHT.

1. *Particulars of objection.*—In an action on the case for an infringement of the copyright of a certain book, the defendant pleaded several pleas, denying that the plaintiff was the proprietor of the copyright; that there was any copyright subsisting; that the books were first published in England, and that the copies complained of were unlawfully printed: *Held*, on application by the plaintiff to have the notice of objection delivered with the defendant's pleas under the 5 & 6 Vict. c. 45, s. 16, amended, that the alleged first publication having taken place abroad, and so far back as the year 1831, it was sufficient for the defendant to state the year of the first publication, and that it was not necessary that he should specify the day or month.

But that he was bound to state the name of the party whom he alleged to be the proprietor or first publisher, the title of the work, the place where, and the time when, the first publication took place.

*Held*, also, that he was not entitled to object that “some person whose name is to the defendant unknown, and not the plaintiff, was the proprietor of the said copyright.”

Nor “that the plaintiff was not himself the author.”

Nor "that the work was not first printed or published in the British dominions."

Nor that the plaintiff never acquired any title by assignment, "or otherwise," to the copyright.

Nor that there was no "valid" assignment, &c.

Nor "that there is no copyright in a work first published out of the British dominions, under such circumstances as the books in question were published."

But that he might object that *A. B.* "if any one, and not the plaintiff," was the proprietor. And at the time of committing the alleged grievance "no copyright" in the work "was subsisting." *Boosey v. Davidson*, 4 D. & L. 147.

2. *Dramatic piece.*—*Change of venue.*—*Material evidence.*—*Proof of scienter.*—*Sufficiency of declaration.*—Where the authorship of a work is in issue, evidence given in corroboration of that fact is a compliance with an undertaking to give material evidence on a change of venue.

Under the provisions of the 3 & 4 W. 4, and 5 & 6 Vict. c. 45, an introduction to a pantomime is protected, and it is not necessary in an action for penalties under those statutes to allege or prove that the defendant knew of the authorship of the plaintiff when he purchased the introduction from another, and it is sufficient if the declaration follow the words of the statute, and it need not go further and allege that the pantomime was exhibited at a public place of dramatic entertainment. *Lee v. Simpson*, 33 L. O. 478.

#### CORONER'S DEPUTY.

*Lawful absence.*—*Signature of inquisition by deputy.*—Under stat. 6 & 7 Vict. c. 83, s. 1, it is a "lawful and reasonable cause" for the absence of the coroner, and the acting of his deputy on an inquest, that the coroner was engaged in holding another inquest.

Where the jury are sworn, and the inquest commences properly before the deputy, he should continue holding the inquest to its conclusion, although in the course of it the principal coroner may be accidentally present.

This inquisition held by the deputy is properly described as taken before the principal coroner.

And it is properly signed in the name of the principal coroner "by *E. M.*, his deputy. *Reg. v. Perkin*, 7 Q. B. 165.

#### CREDITOR.

See *Bankrupt*, 2.

#### EJECTMENT.

*Judgment for plaintiff under stat. 4 G. 2, c. 28, s. 2.*—In ejectment by landlord against tenant, where half a year's rent was due before service of declaration, and no sufficient distress was found on the premises, if the defendant, having entered into a consent rule, does not appear at the trial, and the plaintiff is thereupon nonsuited, the lessor of the plaintiff may, under stat. 4 G. 2, c. 28, s. 2, have judgment,

although there has been no formal demand of rent, or re-entry; but the judgment must be only against the casual ejector, not the defendant. *Doe d. Bedford Charity v. Payne*, 7 Q. B. 287.

#### ELECTION.

6 & 7 Vict. c. 18. — *Refusing vote "maliciously."*—A declaration against the returning officer of a borough alleged the plaintiff to be a burgess, having his name on the borough register, and that he was entitled to vote at a certain election, and that on tendering his vote, the defendant refused to receive it. Plea, that the plaintiff was not a burgess "duly qualified or entitled" to vote at the election: *Held*, that the plea was bad for ambiguity, as the plea left it uncertain whether the defendant intended to allege that the plaintiff was not duly registered, or that he was disqualified from some other cause.

*Semble*, that even on special demurrer, a declaration averring that the defendant "conspiring and wrongfully, fraudulently, wilfully, and maliciously intending to injure the plaintiff, refused to receive the vote of the plaintiff," sufficiently alleged the defendant to have acted maliciously.

A declaration founded on the 6 & 7 Vict. c. 18, s. 82, which prohibits returning officers from allowing a scrutiny, alleged, that when the plaintiff tendered his vote, the returning officer allowed a scrutiny, and after such scrutiny determined that the plaintiff was not entitled to vote, "whereby" the plaintiff was delayed in the exercise of his privilege, and was wholly deprived of his privilege, and a burgess was elected without any vote of the plaintiff. *Held*, that the allegations after the word "whereby" were sufficient averments of facts, and not mere inferences from preceding allegations, and that the facts so averred disclosed sufficient legal damage resulting from holding the scrutiny. *Pryce v. Belcher*, 4 D. & L. 238.

Cases cited in the judgment: *Blofield v. Payne*, 4 B. & Ad. 410; *Taylor v. Henniker*, 12 A. & E. 488; *The Dipper's case*, 2 Wils. 414; *Colson v. Perry*, 2 Rolle's Rep. 379; *Mary's case*, 9 Rep. 113.

#### ERROR.

1. *Bill of exceptions.*—*Interpleader Act.*—*Amendment.*—*Estoppel.*—A writ of error to the Exchequer Chamber from the Court of Queen's Bench, under statute 11 G. 4, and 1 W. 4, c. 70, s. 8, recited that error was alleged in the record and process, and giving of judgment, "in a plaint in an action on promises," and directed that the transcript should be sent to the Justices of the Common Bench and Barons of Exchequer to be viewed and examined, &c. By the transcript it appeared that the judgment was on an issue directed by the Court of Queen's Bench, under stat. 1 & 2 W. 4, c. 58, (the Interpleader Act,) and no process by summons appeared; but the declaration was, in form, on promises upon a wager, and the judgment was that the plaintiff should recover his damages, costs, and



charges. The defendant below had tendered a bill of exceptions. On motion, the Court of Exchequer Chamber quashed the writ of error, holding that the transcript showed that they had no power to view and examine; and holding also that it varied from the writ of error.

By the Court of Exchequer Chamber. The order quashing the writ is matter of record, examinable upon error in the House of Lords.

By the Court of Queen's Bench. A judge having ordered, on summons by the plaintiffs in a cause depending in error, that the plaintiffs should be at liberty to amend the record, (the matter amended not being misprision of the clerk,) and also that they should pay the defendant his costs occasioned by such amendment, the defendant cannot, after taxing and receiving his costs, apply to set aside the order for amendment, as made without jurisdiction. *King v. Simmonds*, 7 Q. B. 289.

Cases cited in the judgment: *Jones v. Stephens*, Lilly's Modern Entries, p. 229; *Tolson v. Kaye*, 6 M. & G. 536; 7 Scott, N. R. 222; *Snook v. Mattock*, 5 A. & E. 239.

2. *Bail*.—Order of court under stat. 6 G. 4, c. 96, s. 1.—*Quære*, in what cases the court can make a special order, by virtue of stat. 6 G. 4, c. 96, s. 1, permitting a plaintiff in error to proceed without giving bail.

But where, in an action of assumpsit, a special verdict has been agreed upon in this court, for the purpose of bringing the case before the Exchequer Chamber, and, after judgment, a writ of error was sued out, but the defendant in error died, and the writ then lapsed without material laches on the part of the plaintiff in error, whereupon the representatives of the defendant in error sued out a *sci. fa.* against the faith of his agreement, this court, in the exercise of its general authority, stayed proceedings on the *sci. fa.* without requiring bail in error, the plaintiff in error undertaking to proceed without delay, and that, if the judgment below were affirmed, the defendants in error should immediately have judgment on the *sci. fa.* *Williams v. Downman*, 7 Q. B. 112.

#### EXCISE ACTS.

1. A dealer in and retailer of tobacco is liable to the penalty of 200*l.*, imposed by the 5 & 6 Vict. c. 93, s. 3, for having in his possession adulterated tobacco, although he had purchased it as genuine, and had no knowledge or cause to suspect that it was not so. *Reg. v. Woodrow*, 15 M. & W. 404.

2. *Notice of appeal from decision of justices*.—Where an officer of excise, by whom an information for penalties is exhibited, is absent at the time of the hearing, and there is an appeal against the judgment, on the part of the Crown, to the quarter sessions, under the 7 & 8 G. 4, c. 53, s. 82, the notice of appeal required by s. 83 may, by virtue of the 4 & 5 W. 4, c. 51, ss. 22, 23, be given and signed by any officer of excise who is present conducting the proceedings. *Reg. v. Woodrow*, 15 M. & W. 404.

3. *Distiller of spirits*.—A person who distils

spirits for the purpose of making, by the addition of nitric acid, *sweet spirits of nitre* for sale, is a distiller of spirits within the meaning of the 6 G. 4, c. 80, ss. 6, 7, requiring an excise license, and liable to the penalties imposed by s. 39 of that act on persons having any private or concealed still, &c. for making or distilling low wines or spirits. *Attorney-General v. Bailey*, 16 M. & W. 74.

#### EXECUTION.

See *Bankrupt*, 1.

#### FEME COVERT.

*Conveyance under 3 & 4 W. 4, c. 74, s. 91*.—Upon the motion on the part of a married woman, under the 3 & 4 W. 4, c. 74, s. 91, to convey her interest in property without the concurrence of her husband, on the ground that he is of unsound mind, the affidavit must show in distinct terms, or by necessary inference, that the husband is lunatic at the time of the application. *In re Turner*, 3 B. C. 166.

#### FRAUDS, STATUTE OF.

1. *Case not within the 4th section*.—A contract for the maintenance of a child at the defendant's request, to endure, "so long as the defendant shall think proper," is a contract upon a contingency, the performance of which is not necessarily to take place beyond the space of a year, and therefore not within the 4th section of the Statute of Frauds.

*Semble*, per *Tindal C. J.*, that the stat. does not apply where the action is brought upon an executed consideration. *Souch v. Strawbridge*, 2 C. B. 808.

Case cited in the judgment: *Peter v. Compton Skinner*, 353.

2. *Case within the 4th section*.—*A.* enters the service of *B.* under a written agreement, as follows:—"I agree to receive you as clerk in my establishment, in consideration of your paying me a premium of 300*l.*, and to pay you a salary at the following rates, viz., for the 1st year 70*l.*; for the second 90*l.*; for the 3rd 110*l.*; for the 4th 130*l.*, and 150*l.* for the 5th and following years that you may remain in my employment."

*Held*, that the agreement was one, that by the Statute of Frauds, was required to be in writing; that there being a precise stipulation for yearly payments, evidence was not admissible to show that at or after the time the letter containing it was sent by *B.* to *A.*, it was verbally agreed that the salary should be paid quarterly; and that the fact of the payment having usually been made quarterly, did not vary the rights of the parties under the agreement. *Giraud v. Richmond*, 2 C. B. 835.

Case cited in the judgment: *Goss v. Lord Nugent*, 5 B. & Ad. 58; 2 N. & M. 28.

3. *Acceptance of goods*.—Goods were shipped by the plaintiff from abroad to this country, on the verbal order of the defendant, at a price exceeding 10*l.* They were sent to a shipping agent of the plaintiff's in London, who re-

ceived them and warehoused them with a wharfinger, informing the defendant of their arrival. The wharfinger handed to the shipping agent a delivery warrant whereby the goods were made deliverable to him or his assignees by indorsement, on payment of rent and charges. The agent indorsed and delivered this warrant to the defendant, who kept it for several months, and, notwithstanding repeated applications, did not pay the price of, or charges upon, the goods, nor return the warrant, but said he sent it to his solicitor, and that he intended to resist payment, for that he had never ordered the goods; and that they would remain for the present in bond: *Held*, that there was no such delivery to, and acceptance by, the defendant of the goods, as to satisfy the 17th section of the Statute of Frauds. *Farina v. Home*, 16 M. & W. 119.

Case cited in the judgment: *Bentall v. Burn*, 3 B. & Cr. 423.

[The remainder of the Decisions on the Construction of Statutes will be given in the next number.]

## METROPOLITAN AND PROVINCIAL ASSOCIATION.

THE enrolment of members of this association is going forward daily. We exhort every practitioner not merely to send in his adhesion, but to call the attention of members of the legislature to the objects of the association. They are right and just, and ought to be supported by every one who is concerned in the due administration of our laws.

## MASTERS EXTRAORDINARY IN CHANCERY.

From July 27th, to August 20th, 1847, both inclusive, with dates when gazetted.

Ayre, John, jun., Bristol. Aug. 10.

Clarke, Robert, jun., Bath. Aug. 20.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From July 27th, to August 20th, 1847, both inclusive, with dates when gazetted.

Beales, John Edward, and Charles Philip Utton, 45, Bedford Row, Attorneys and Solicitors. Aug. 13.

Gill, Robert, and William Phillips, Easingwold, Attorneys, Solicitors, and Conveyancers. Aug. 13.

Smith, Charles Henry, and John Henry Jones, 13, Duke Street, Manchester Square, Attorneys and Solicitors. July 27.

## THE EDITOR'S LETTER BOX.

THE next volume of *The Legal Observer* will be further enlarged, in order to increase the number and value of the REPORTS OF RECENT DECISIONS, without curtailing any of the Original Articles, or select Information, for which the Work has been distinguished. We trust, indeed, to improve also the scope of our original disquisitions.

In carrying the additional arrangements into effect, and to enable the Reports of Cases and other Court business to be separated from the rest,—the work will be divided into two parts.

The 1st Part, containing original articles on all projected alterations in the Law and Practice;—the state of the Profession and measures for its improvement;—New Statutes, with explanatory notes and disquisitions on their construction;—Parliamentary Bills, Reports and Returns:—Notes or Commentaries on important Decisions in Common Law, Equity and Conveyancing:—the Law of Railways, Insurance, and other Joint Stock Companies:—Reviews of New Books:—The Law of Attorneys and Costs, and the Examination of Articled Clerks:—Legal Education;—Proceedings of Law Societies:—Legal Biography; Correspondence; Professional Lists, &c.

The 2nd Part containing *original and early* Reports of every important Decision in all the Superior Courts, by Barristers of the several Courts:—New Rules and Orders of Court;—an Analytical Digest of all Reported Cases in all the Courts—classified according to the leading subjects adjudicated upon;—Cause Lists;—Circuits;—Sittings; and every other information relating to the business of all the courts.

Each Part will be separately paged in order to be bound in two volumes annually. The price will remain the same as at present, viz.: 8d., or stamped 9d.

“Tacitum” inquires, whether a creditor who, previous to the passing of the New County Courts Act, obtained a judgment for a debt not exceeding 20*l.*; can summon the debtor before a judge of the New County Courts, under the 1st sect. of the Small Debts Act, 8 & 9 Vict. c. 127, such court at the time of the passing of the act not being in existence. Does not the new act give jurisdiction?

The case of *Wood v. Mytton*, on a promissory note payable to the maker's order, regarding which a correspondent has inquired, will appear next week.

We have not received the letter of A. on the assignment of a policy.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, SEPTEMBER 4, 1847.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

### THE LAST NEW BANKRUPT AND INSOLVENT ACT.

WE have been for several years past so accustomed to an annual change in the law relating to bankruptcy and insolvency, that we look for the act at the close of the session, as we do to see grouse or partridge at this season in the poulterers' shops, very much as matter of course. The act, passed in the last session, to unsettle the jurisdiction of the Courts of Bankruptcy, and Court for the Relief of Insolvent Debtors, is to commence and take effect from the 15th September instant.\* Our readers will possibly remember that, during the progress of the bill through parliament, its leading provisions were repeatedly commented upon, and its more striking omissions and defects pointed out, in these pages; but as it has now obtained the binding force of a law, and comes into immediate operation, it is of importance that the profession and the public should have their early attention directed to its practical effects, even at the hazard of repeating some observations already published.

The most striking change created by the 10 & 11 Vict. c. 102, is, that after the 14th September, the petitions heretofore presented to the Court of Bankruptcy for protection, under the statutes 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, can no longer be received in that court. With respect to petitions presented on or before that day, the provisions of the acts last-mentioned, and the jurisdiction of the

Commissioners of Bankruptcy under those acts, and under the rules and orders made in pursuance thereof, remain in full force and effect. (Sect. 9.)

No part of either of the acts under which petitions were heretofore presented to the Court of Bankruptcy, has been repealed by the 10 & 11 Vict. c. 102; but the jurisdiction is taken from the Court of Bankruptcy, and transferred and vested in the Court for the Relief of Insolvent Debtors in England, and in the new County Courts constituted under the act 9 & 10 Vict. c. 95. The jurisdiction, of which the Court of Bankruptcy is divested, is divided between the Insolvent Court and the County Courts, in the following proportions. When an insolvent has resided for six calendar months next immediately preceding the time of filing his petition, within any parish the distance whereof, as measured by the nearest highway from the General Post-Office in London, to the parish church of such parish, shall not exceed 20 miles, the jurisdiction, as regards such insolvent, is to be in the Court for the Relief of Insolvent Debtors. When the insolvent resides beyond the jurisdiction of the Insolvent Court, and has resided within six months next immediately preceding the time of filing his petition, within the district of a County Court, the insolvent must prefer his petition to such County Court. Where the insolvent has not resided for six calendar months before the time he desires to file his petition, either within the district thus allotted to the Insolvent Court, or in the district of any County Court, it is provided that such insolvent may file his pe-

\* The act itself is printed *in extenso*, ante, p. 310, and is cited as the 10 & 11 Vict. c. 102.

petition in the Court for Relief of Insolvent Debtors, and that Court may either exercise jurisdiction in the matter of such petition, or direct one of the County Courts to exercise such jurisdiction. (Sect. 8).

The form of petition used in the Bankruptcy Court was provided by the stat. 7 & 8 Vict. c. 96, (sched. A.), and it was expressly enacted, that any petition not in the form prescribed should be dismissed, a provision which was a constant occasion for complaint and regret on the part of those entrusted with the administration of the act, as they felt precluded from allowing any amendment in the petition after it was filed, and compelled to dismiss numberless petitions defective in form, without any respect for the merits, or the conscientious scruples which may have induced the petitioners to alter the form, and adapt it to circumstances, before they proceeded to swear (as the act obliged them to do) that the allegations therein contained were true. The act 10 & 11 Vict. c. 102, s. 16, declares, that the forms given in the schedules to the acts cited "may be altered so far as to adapt them to the change of jurisdiction by this act directed;" which, we presume, merely means, to change the title of the court and judges, but it does not authorize any amendment of the petition, or any deviation from the specified form; and we apprehend, that in these particulars the commissioners of the Insolvent Court and the judges of the County Courts will be, as powerless, and feel themselves as much shackled, as the Commissioners of Bankrupts have been in administering those acts.

The jurisdiction of the Court of Bankruptcy, under the acts first referred to, it will be remembered, only extended to persons not being traders within the meaning of the statutes in force relating to bankrupts on the 12th August, 1842, when the 5 & 6 Vict. c. 116, came into operation; or to persons being such traders, but owing debts amounting in the whole to less than 300*l*. The jurisdiction now transferred to, and divided between, the Insolvent Court and the County Courts, as above stated, is limited in the like manner. A trader owing debts exceeding 300*l*. has now no *locus standi* in the Insolvent Court or the County Court, under the 5 & 6 Vict. c. 116, and the 7 & 8 Vict. c. 96, any more than he had heretofore in the Court of Bankruptcy. A person so circumstanced, therefore, and who desires to obtain the

benefit of the laws passed for the relief of insolvents, must still proceed under the law which was in operation before the acts last cited obtained the sanction of the legislature, and petition the Court for the Relief of Insolvent Debtors, under the 1 & 2 Vict. c. 110. The forms, the course of procedure, and the practical results under the provisions of the acts heretofore administered in the Court of Bankruptcy, were novel, peculiar, and evidently not framed with a desire to assimilate them to any system previously established. A debtor at large, and not pressed by any creditor, or a debtor in custody, may petition under those acts, and obtain a final order to protect his person from being taken or detained under any process in respect of the debts due or claimed to be due at the time of filing his petition. The court may grant, or refuse, or delay granting, such final order, but has no power to punish in any case. The power of petitioning the Insolvent Court, under the stat. 1 & 2 Vict. c. 110, is limited to persons who shall be "in actual custody within the walls of some prison." The court has authority to punish by a lengthened imprisonment in a variety of cases. The Insolvent Court, and, as we shall presently see, the County Courts, are now required to administer these two distinct systems, the petitioner selecting that which he deems preferable and most advantageous to himself.

With respect to petitions presented under the acts heretofore administered in the Court of Bankruptcy, the County Courts, within their respective jurisdictions, will in future have a direct original jurisdiction. Such petitions will be filed, in the first instance, in those courts, and finally disposed of there without control or appeal. The jurisdiction now conferred on the County Courts, as regards petitions filed under the stat. 1 & 2 Vict. c. 110, stands on a totally different footing. Our readers are aware that the Insolvent Commissioners have been in the habit of making three circuits in every year, for the purpose of adjudicating upon petitions filed by insolvents imprisoned in the various county gaols of England and Wales. By the 10th section of the recent act, those circuits are abolished, and insolvents imprisoned in any gaol beyond the distance to which the jurisdiction of the Insolvent Court is now restricted as above mentioned, are to have their cases adjudicated upon hereafter by the judge of the County Court

in whose district the insolvent has resided. The machinery by which this transfer of jurisdiction is effected appears to be at once cumbersome and defective. The petition and schedule of any prisoner confined in a county gaol is to be filed as at present, in the Insolvent Court in London; and the Insolvent Court is to make an order, "referring the petition for hearing to the County Court within the district of which such insolvent debtor is in custody, and transmit such petition and schedule to such court for hearing accordingly." The judge of the County Court being thus seised of the cause, as it were, is empowered to appoint a time and place for the prisoner to be brought up, and has the same authority with respect to the petition, and as to all matters requisite for the remanding or discharging such prisoner, and as to his schedule, creditors, and assignees, as the Insolvent Court would have had if the matter remained to be adjudicated there. The petition and schedule, with all judgments, rules, orders, and proceedings in respect thereof, in the County Court, are to be signed by the judge of that court, and returned to the Court for the Relief of Insolvent Debtors, to be kept as a record of that court. The section is silent as to the period when the proceedings in any case are to be transmitted by the County Court to the Insolvent Court, or to what court application is to be made after the proceedings are transmitted to the Insolvent Court, in cases where property is acquired by the insolvent subsequently to his discharge, or in the numerous cases in which applications are now made to the Insolvent Court in reference to assignees, long after the discharge of the insolvent.

The clause in the new act, with respect to the recognizances of sureties, also appears to have been framed in such a manner as to suggest numerous doubts and difficulties. Under the 1 & 2 Vict. c. 110, various persons have entered into recognizances to the provisional assignee of the Insolvent Court, conditioned that the Insolvents should duly appear at the places and time therein mentioned. The 10 & 11 Vict. c. 102, s. 11, after reciting this, enacts,—“That every such recognizance shall extend to bind the persons who may have entered into the same, in case the insolvent debtor therein mentioned shall not, at the time appointed in such recognizance, duly appear before the County Court to which the matter of such insol-

vent is transferred by this act, and on every adjourned hearing, or shall not abide by the final judgment of such court.” We apprehend the intention of those who framed this clause was, that the parties who entered into recognizances should not be discharged, because the time for hearing the insolvent's petition should be changed from that mentioned in the recognizance, pursuant to the provisions of this act. It appears to have been overlooked, however, that the country insolvents now out on bail, will have to be heard, not only at a different time, but at different places from those originally fixed and mentioned in the recognizances. The Insolvent Commissioners have not held their courts in every town in which a County Court has been established: their circuit towns were usually the county towns. For instance, all the insolvents in custody within the West Riding of Yorkshire attended the Commissioner's Court at Wakefield, and the recognizances to the provisional assignee in all bail cases arising in the West Riding are to attend at that town. Wakefield is not the only town, however, in the West Riding in which a County Court is established. The West Riding no less than 23 towns, besides Wakefield, in which County Courts are holden under the 9 & 10 Vict. c. 95.<sup>b</sup> The insolvents who have resided at Leeds, or Huddersfield, or Boston, must be heard before the County Court judges for those districts under the new act, and not by the judge who sits at Wakefield; and what validity can the recognizances have to ensure an attendance at other places, when the condition is, that the insolvent shall attend at Wakefield? The clause we have cited, however, it will be observed, refers only to recognizances already taken, or which may be taken before the 15th September, when the new act comes into operation. No provision is made in this clause, or in any other part of the act, as to the manner in which, or the persons by whom recognizances are to be taken hereafter. It is left in doubt, therefore, whether the recognizance of an insolvent, entitled to his discharge before hearing, is to be entered into in the Insolvent Court in London, or in the County Court where his petition is to be finally heard?

The authority heretofore exercised by

<sup>b</sup> See these towns enumerated, together with the parishes, &c. forming the district of each court town, in Mr. Jagoe's Book on the County Courts, p. 18, 3rd edit., Appendix. u 2

the Court of Bankruptcy under the Small Debts Act, (8 & 9 Vict. c. 127,) is transferred to the Court for the Relief of Insolvent Debtors, and the Judges of the County Courts, in the same manner and with the same restrictions as to the limits of the jurisdiction,—as the jurisdiction with regard to insolvents petitioning under the acts 5 & 6, and 7 & 8 Vict. No provision however is made for summoning a judgment debtor, under the 8 & 9 Vict. c. 127, who does not happen to have resided for six months in any one place!

The Court of Review in Bankruptcy is abolished *in name* by the late act, but it is expressly provided, that “all the jurisdiction, power, authority, and privileges of the said court,” shall be vested in and hereafter exercised by “such one of the Vice-Chancellors as the Lord Chancellor shall from time to time be pleased to appoint,” and that all persons holding office in the Court of Review, shall continue to hold the same and perform the duties under the new jurisdiction. And it is further provided, that all laws and orders relating to the practice and proceedings in the Court of Review, and the right of appeal therefrom, shall be applicable to the jurisdiction to be created by the appointment of the Vice-Chancellor. Much of the authority exercised by the Court of Review is of a formal nature, which might with undeniable advantage to all parties, be vested in the Commissioners in Bankruptcy, but no amendments of this nature appear to have been contemplated by those who framed the act under consideration.

The other provisions contained in the recent act, do not involve any practical change of importance. The Lord Chancellor is authorized to give directions for the sittings of the Court of Bankruptcy elsewhere than in London; and to order payment of the travelling expenses of the Commissioner and Register in such cases, a power which we incline to think the Lord Chancellor already possessed under the 7 & 8 Vict. c. 96, s. 44, although it has never been exercised. In contemplation, we presume, of some intended alterations in the Law relating to Bankruptcy and Insolvency next session,—it is provided, that if the office of Commissioner of the Insolvent Court, or of the Court of Bankruptcy should become vacant, the vacancy shall not be filled up until after the termination of the next session of parliament, (sect. 17,) and it is declared by another clause, which

has no direct connection with any other provision in the act, that no Judge of the County Court shall be capable of sitting as a member of the House of Commons. (sect. 18.)

With regard to the jurisdiction, transferred from the Bankruptcy Court to the Court for the Relief of Insolvent Debtors, we understand that the learned Commissioners of the latter court are sedulously and commendably engaged, in framing rules and regulations, for the purpose of giving effect, so far as they can, to the intentions of the legislature; and with reference to petitions filed in that court, under the 1 & 2 Vict., and which are to be directed by the Insolvent Court to the Judges of the County Court for adjudication, as above described, the Insolvent Commissioners have addressed a circular to the Judges of the several County Courts, dated 17th August, 1847. We shall only add, that although strongly impressed with the palpable absurdity of calling upon the Insolvent Court to administer two distinct and dissimilar systems of Insolvent Law, we are convinced that the able and experienced judges who preside in that court, will use their best endeavours to discharge the anomalous duties imposed upon them with advantage to the public.

The following is the Circular:—

*“Portugal Street, Lincoln's Inn Fields.*

“Sir,—The late act, 10 & 11 Vict. c. 102, having thrown upon you certain of the duties heretofore performed by a commissioner of this court, we think it right to furnish you with copies in duplicate of the rules and free list which have been in use here; also with the forms which have been used in country cases, preparatory to the circuit, and on the circuit. They were framed with much care: and such of them as concern the business which is to be performed in your court, will easily be adapted to its use by a few obvious verbal alterations.

“The prisons in your districts are those of

“We shall be obliged by your informing us where your office or offices will be for the business of insolvent debtors confined in each of these prisons; that is to say, the places at which the schedule and books will be directed by you to be lodged, where the orders for hearing will be given out to the attorneys, where searches will be made, and from which office copies will be obtained, and subpoenas issued.

“We propose to follow the same course as heretofore, when the schedule was lodged with the clerk of the peace; namely, to give it out to the insolvent's attorney, together with the order of reference which the act requires to be made.

“The schedule, &c. cannot be returned to this court through the same channel; but must be sent direct from the custody of the county

court to this court, the clerk making the parcel, directing, and despatching it. The carriage will be paid here on arrival.

"Probably you will think it best to retain the schedule when a case is adjourned to a future court, and to return it to us after such adjourned hearing. Nevertheless it seems expedient that a report should be made of the proceedings of each sitting, giving by a calendar such information as this form has been used to contain. This might be sent by post, when the schedule and its accompaniments are retained.

"It may be useful to observe, that the practice has been, for the affidavits of service and newspaper advertisements to be examined with the schedule, whether by a clerk in London, or by the circuit clerk, previously to the hearing; be minutes in pencil, in the fold of the schedule, all defects in notices or the service thereof, which should be brought to the attention of the commissioners. All Gazette advertisements whatever have been examined at the office here, immediately after publication of each Gazette.

"There is a fee, not in our list, which will no doubt be payable to the clerk of the county court; namely, the fee of 5s., which by the 106th section of 1 & 2 Vict. c. 110, has been paid to the clerk of the peace. So the fee of 1s. 6d. payable by the insolvent to the gaoler is not in our list.

"You will observe at the end of the 10th section of the new act, a provision for ordering the expense of bringing up a prisoner to be paid by the provisional assignee. This means the expense of conveying him, when the hearing is ordered at some other town than that where the gaol is. If the prison towns are places of sitting in your district, you will probably always appoint the hearings at such places; and the case in question cannot arise. But if a case of conveying an insolvent to another town should arise, we beg to recommend that the expense should be ordered to be paid, as heretofore, by the treasurer of the county; using the usual form, which we forward with the rest. This, by the words of the act giving you all powers, &c. &c. you clearly have jurisdiction to do. The provisional assignee has not by virtue of his office any concern with the fund so spoken of at the end of the 10th section, though we may for convenience employ him in making payments of it by small advances. The fund is in the names of the commissioners at the Bank of England; and the chief clerk, who is accountant with the government, when he goes to audit, gives account of it. There are prior claims on this interest fund which arise from time to time. Even if the county court had been authorized to draw on the commissioners, there may not always be money in hand; so that the gaoler's order for the few shillings that he requires might be dishonoured.

"Concerning assignees, our circuit practice has been the same as formerly, when country cases were heard at quarter sessions. The commissioners have nominated the assignees, the justices did; but the appointment is made by the court.

"The commissioners' orders, allowing costs of opposition to creditors, have been signed on circuit but retained and sent to London with the schedule. The agent afterwards applies here for the order and taxes his costs.

"The 112th section of 1 & 2 Vict. c. 110, will show before whom, besides yourself and ourselves, affidavits may be sworn. We have appointed all gaolers in England commissioners for taking affidavits; possibly there may be some who have failed to take out their appointments.

"The seal of the court is applied to every document before it is issued."

Signed by the Commissioners of the Court for the Relief of Insolvent Debtors.

## FORM AND EFFECT OF A GUARANTEE.

AN engagement to pay the debt of another, which the Statute of Frauds requires should be in writing, is constantly drawn up by men of business without previous consultation with their professional advisers, and the result in numerous cases is, that the supposed security turns out to be utterly worthless. An instance of this kind is furnished in the last number of the reported cases in the Court of Exchequer, which we need no excuse for adverting to, as it is of the utmost importance that the law governing transactions of this nature should be clearly understood.

In the case referred to,<sup>c</sup> it appeared that a guarantee was signed by the defendant in the following terms:—"1843, June 28th. Mr. Price,—I will see you paid for 5l. or 10l. worth of leather, on the 6th of December, for Thomas Lewis, Shoemaker."

The objection was, that this document did not disclose any consideration on the face of it; and in argument, on the part of the plaintiff, it was submitted, that it appeared sufficiently on the face of the guarantee that it was given for leather to be supplied subsequently to the execution of the instrument. The case of *Kenneway v. Treleavan*<sup>d</sup> was cited, in which the form of the instrument was,—“I hereby guarantee to you, Messrs. K. & Co., the sum of 250l., in case Mr. P. should default in his capacity of agent and traveller to you;” and it was held that the future employment of P. as agent and traveller was a sufficient consideration, and appeared on the face of the document.

<sup>c</sup> Price v. Richardson, 15 M. & W. 539.

<sup>d</sup> 5 Mees. & W. 498.



The court, without calling on the defendant's counsel, observed, that it had been fully established in *Wain v. Warlters*,<sup>e</sup> that in every case of guarantee the consideration ought to appear on the face of the instrument. Here the real consideration for the defendant's promise did not appear, either expressly or by necessary implication. The consideration might be the future supply of goods, or payment of a debt already due by Lewis, if the plaintiff would forbear to sue Lewis for it. The consideration intended by the parties was left to mere conjecture, and the court was therefore unanimously of opinion that a verdict obtained in an action on this instrument must be set aside, and a nonsuit entered.

In a subsequent case of *Ackermann v. Ehrensperger*,<sup>f</sup> in the same court, where the form of the guarantee, (by which the defendant undertook for the due acceptance and payment of two bills of exchange,) was correct, a question was raised, whether the plaintiff was entitled to recover interest upon the bills from the time they became due? The argument on the part of the defendant was, that a guarantee for payment means payment on the day the bill becomes due; and that the liability of the guarantor could not extend beyond that of the acceptor, which was to pay the bill when due. If the bill was paid when due, no claim for interest could be sustained, and therefore it was said, that the claim for interest began when the liability of the surety ended.

The court, however, was unanimously of opinion that a party who guarantees the payment of a bill is liable for all the principal would be liable for; and that the loss of interest was legitimately recoverable as damages flowing from the defendant's breach of contract. Judgment was therefore entered for the plaintiff as well for the interest as the principal due on the bills.

## HISTORICAL SKETCHES OF THE PROFESSION.

### NO. 2. REGULATIONS OF THE INNS OF COURT RELATING TO ATTORNEYS.

IN the preceding paper,<sup>g</sup> the substance of the Statutes and Rules of Court relating to Attorneys and Solicitors was set forth. Reserving for separate consideration the

origin and constitution of the Inns of Court and their powers in regard to the Admission of Members, Calling to the Bar, or practising under it,—we shall for the present state the scope and effect of the Regulations of these “ancient and honourable Societies,” so far as they relate to attorneys and solicitors.

It has been already shown, that by a series of rules of the Superior Courts from the year 1632 down to 1704, attorneys and solicitors were required to be members of one of the Inns of Court or Chancery.

The judges, it may be assumed, not only deemed it not inconsistent with the dignity of those learned societies, that attorneys and solicitors should be associated with them, but that it would tend to the public advantage in the administration of justice, that such association should take place.

The benchers of the Inns of Court appear, however, to have entertained a different opinion.

Neither the Inns of Court nor Chancery appear to have taken any steps for enforcing the power conferred by the rules of court. It does not appear that any application was ever made to the court to compel these admissions into any of the Inns of Court or Chancery.

But not only have the Inns of Court or Chancery neglected to avail themselves of the right of enforcing this membership of both branches of practice in “the Great University of the Law,” but the former have excluded attorneys and solicitors and their articulated clerks from admission into those societies.

In the Inner Temple, in the 3 & 4 Philip and Mary, there was an order made, that thenceforth no attorney or common solicitor should be admitted into that house without the assent and agreement of their parliament. And orders relating to all the Inns of Court were made on the 22nd June, 1557, as follows:—“That none attorney should be admitted into any of the houses. And that in all admissions from thenceforth that condition shall be implied; that if he, that shall be admitted practise any attorneyship,<sup>h</sup> that then *ipso facto* he be dismissed, and to have liberty to repair to the Inn of Chancery from whence he came, or to any other if he were of none before.”

For the government of the Inns of Court orders were also made by commandment of the Queen's Majesty, with the advice of

<sup>e</sup> 5 East, 10.

<sup>f</sup> 6 Mees. & W. 99.

<sup>g</sup> See p. 388, ante.

<sup>h</sup> This regulation, if enforced, would disbar such of the government solicitors as are barristers.

her privy council, and the justices of the Bench and the Common Pleas at Westminster, in Easter Term, 16 Reg. Eliz. 1574, as follow:—"If any hereafter admitted in court, practise as attorney or solicitor, they be dismissed and expelled out of their houses thereupon; *except the persons that shall be solicitors shall also use the exercising of learning and mooting in the house*, and so be allowed by the bench."

And again in 1614, 7th November, 12 Jac. :—"For that there ought alwaies to be preserved a difference between a counsellor at law which is the principal person next unto serjeants and judges in administration of justice; and attorneys and solicitors which are but ministerial persons and of an inferior nature; therefore it was ordered, that from thenceforth no common attorney or solicitor should be admitted of any of the four Houses of Court."—Again, in the 15th April, 6 Car. 1, 1630, it was ordered,—"That in case any attorney, clerk, or officer of any court of justice being of any of the Inns of Chancery, should withstand the direction given by the benchers of court, upon complaint thereof to the judges of the court in which he should serve, he should be severely punished, either by forejudging from the court or otherwise, as the case should deserve."

And in the Inner Temple it was ordered in 1635, 11 Car. 1, That no common attorney or solicitor be thereafter admitted of any of the four Inns of Court; and that the act of parliament of that house touching non-admittance of common attorneys, made 25 June, 3 & 4 Ph. & M., be from henceforth duly observed. And further, that a list be made of the names of the present attorneys and solicitors of that house, and entered into the parliament book, and if any gentleman from thenceforth after he should be admitted should then become an attorney, or should practise as a common attorney or solicitor in any of his Majesty's courts, he should *ipso facto* be expelled the house. Similar orders were made in the 11 Charles 1st, and the 16 Charles the 2nd.

The Inner and Middle Temple, at a later period, in 1762, ordered that no attorney or solicitor or clerk in the Chancery or Exchequer be called to the bar till they should have actually discontinued the practice of their profession *two years*; and in 1789, it was ordered that no articulated clerk, either to an attorney or solicitor, or to a clerk in the Court of Chancery or

Court of Exchequer, ought to be called to the bar until his articles should either have expired or have been cancelled for the space of two whole years.

The Society of Lincoln's Inn, in 1808, resolved not to hear the exercises of any gentleman who had been an attorney or solicitor, until his name should have been taken off the roll, nor of any gentleman who acted as clerk to any attorney or solicitor, nor that any attorney or solicitor should be called to the bar till his name should have been taken off the roll for two years; nor any clerk to an attorney or solicitor till he should have ceased for two years to act as such clerk.

And in 1825, it was resolved by Lincoln's Inn and the Middle Temple, That no recipiatur for entering into commons should thereafter be granted to any person, whether owner of chambers or not, whose name stood on the roll of attorneys or solicitors, or who should be engaged in any profession other than the law, or in any trade, business, or occupation; and in 1828 this rule was also adopted in the other Inns.

Notwithstanding these regulations of the benchers, the exclusion of attorneys was in some instances relaxed, and many of the present members of that branch of the profession have been admitted as members of some of the Inns of Court, and are entitled to be called to the bar after ceasing to practise for two years. The rules of exclusion, however, have recently been rendered more stringent. In 1844 the following regulation was made by the benchers:—

"That no attorney at law, solicitor, or writer to the signet, or writer to the Scotch courts, proctor, notary public, or parliamentary agent, or person acting as such, and no clerk of or to any barrister, conveyancer, special pleader, attorney, solicitor, writer to the signet, or writers of the Scotch courts, proctor, notary, parliamentary agent, clerk in Chancery, or other officer in any court of law or equity, whether such clerk be articulated or in the receipt of a salary, or of other remuneration for his services, shall be allowed to keep commons available for the purpose of being called to the bar, whether such person be already, or may hereafter, become a member of the society until such person being an attorney shall have taken his name off the rolls; nor until he and every other person above named or described shall have ceased to act or practise as such attorney, writer to the signet, or writer of the Scotch

courts, solicitor, proctor, agent, or clerk, as aforesaid, saving always, to any person or persons circumstanced as aforesaid, the benefit of any term or terms which he or they may have kept in conformity with the orders of this society.

The effect consequently now is, that although three years are sufficient to keep the usual number of terms, an attorney must cease to practise for five years before he can be called to the bar, unless he be already a member of the society.

The reason for this prohibition, so far as the public interest is concerned, is not satisfactorily established. It is supposed that the attorney who is accustomed to hold immediate intercourse with the suitors, would carry with him too much of their personal feeling to fit him for the position of a barrister, and secure the confidence of the court.

The admirable address which was made to the House of Commons by Master Stephen on the 23rd March, in the year 1810, when one of the Inns of Court attempted to exclude all persons who had ever reported in or written for the public press, may with slight alteration be applied to attorneys and solicitors.

He said, that to fix a stigma on any class of men, and degrade them below their fellow-subjects by exclusion from a common privilege, was the surest way to make them disaffected to the state, such at least must be the case when the ground of exclusion was an impeachment of their moral or honorary character. But if such oppression was to be introduced in this land of freedom and equality, at least we should take care not to select as the victims of it, a set of men who had so much power to do good or harm in their hands as the *attorneys and solicitors*. Against their united and systematic hostility, the due administration of justice could not be conducted. To sanction an innovation therefore that would tend to raise an *esprit de corps* among them universally, would be to aggravate greatly the difficulty of domestic government. As a friend to the *pure administration of justice*, he deprecated such a precedent, for the *courts of justice* would soon become dangerous and obnoxious if they were to fall into the hands of *degraded practitioners*. It was in this view chiefly that he thought the interference of parliament justifiable, if the perseverance of the benchers should make it necessary. It was not a private or particular case to be redressed by appeal to the judges, but a case of general and public mischief, fit for the presiding wisdom of parliament as the guardian of the public weal to notice and correct. He regarded such stigmas on a particular class or caste of men in any society, as cruel and mischievous in another view, for if they did not

find men worthy of contempt they would soon make them so. Degrade any portion of society and you will infallibly reduce its moral character till it seems deserving of the ignominy to which it has been unjustly subjected. He had lived long in a part of the world (the West Indies) which furnished a striking proof of this remark, and there was nothing more obvious in a contemptuous oppression than its corrupting effect on the minds of its unfortunate victims. If this were so when the badge of degradation was the colour of the skin or some other subject of public contempt which the individuals derived from nature or some other unavoidable source, how much more when entering into the degraded caste were matter not of necessity but choice. Men would not choose an employment proscribed as dishonourable, unless their moral character were already corrupted. Were we prepared then at once to maintain the purity of our *courts of justice*, and to say that its ministers should hereafter be men so low in moral and honorary sentiments as to choose an ignominious employment? To select the popular and open profession of the bar as the only subject of this degrading disfranchisement of a portion of the commons of England was peculiarly improper and strange. That profession was in a pre-eminent manner the patrimony of the people at large, and to it indeed they owed, more than to their parliaments, that general equality of rights and exemption from all aristocratical oppression, which it was their distinguishing happiness to possess. The courts of law, by their liberality, had abolished that distinction of castes which in the times of villenage degraded a great majority of our ancestors, and excluded them from liberal professions. It was a blessing which the people of England owed to their lawyers, and it was singular that a departure from the principle of constitutional equality should in these days begin in the same profession. He could not help suspecting in this regulation a latent principle of aristocratical pride and contempt for poverty. And if poverty or humility of origin were to become reproachful in the Inns of Court, many a proud escutcheon which now ornamented their walls must be taken down! In other professions, as the church or army, hereditary claims or fortune might facilitate preferment, but at the bar, a profession which was a much more frequent road to rank and fortune, no such extrinsic advantages were of any avail. On the contrary, it was proverbial that a necessity arising from poverty in the early part of life was almost the only source of splendid success at the bar. It was the most amiable and valuable fruit of our happy constitution, that every path of honourable ambition was open to talent and industry without distinction of ranks, but in the law especially the strongest examples of the happy effects of this equality were to be found.

The exclusion of attorneys from the Inns of Court will soon be discussed as a question of public expediency.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

## COPYHOLD COMMISSION.

10 &amp; 11 VICT. c. 101.

An Act to continue the Copyhold Commission until the First Day of October One thousand eight hundred and fifty, and to the end of then next session of parliament. [22nd July, 1847.]

1. 4 & 5 Vict. c. 35. *Copyhold commission to continue till 1st October, 1850.*—Whereas by an act passed in the 5 & 6 Vict. c. 35, intituled “An Act for the Commutation of certain Manorial Rights in respect of Lands of Copyhold and Customary Tenure, and in respect of other Lands subject to such Rights, and for facilitating the Enfranchisement of such Lands, and for the Improvement of such Tenure,” it was among other things enacted, that no commissioner or assistant commissioner, secretary, assistant secretary, or other officer or person appointed under the said act, should hold his office for a longer period than five years next after the day of the passing of the said act, and thenceforth until the end of the then next session of parliament: And whereas the said act was amended and explained by an act passed in the 7th year of the reign of her Majesty, and by an act passed in the 8th year of the reign of her Majesty: And whereas the said commission was further continued by an act passed in the last session of parliament; and it is expedient that the same be further continued: Be it enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That every commissioner or assistant commissioner, secretary, assistant secretary, or other officer or person appointed or to be appointed for the purposes of the said commission, shall be empowered (unless he shall sooner resign or be removed) to hold his office, and so much of the first-recited act as authorizes any such appointment shall be continued, until the 1st day of October, in the year 1850, and to the end of the then next session of parliament.

3. *Act may be amended, &c.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament.

## RATING STOCK IN TRADE.

10 &amp; 11 VICT. c. 77.

An Act to continue until the 1st day of October, One thousand eight hundred and forty-eight, and to the End of the then next Session of Parliament, the Exemption of Inhabitants of Parishes, Townships, and Villages from Liability to be rated as such in respect of Stock in Trade or other Property to the Relief of the Poor. [22nd July, 1847.]

1. 3 & 4 Vict. c. 89. *Recited act further continued.*—Whereas an act was passed in the

3 & 4 Vict. c. 89, intituled “An Act to exempt until the 31st day of December, 1841, Inhabitants of Parishes, Townships, and Villages from Liability to be rated as such in respect of Stock in Trade or other Property to the Relief of the Poor:” And whereas the said act hath been since continued by sundry acts until the 1st day of October in the year 1847, and, if parliament be then sitting, to the end of the then session of parliament, and it is expedient that the said act be further continued: Be it enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the first-mentioned act shall continue in force until the 1st day of October in the year 1848, and to the end of the then next session of parliament.

2. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in this session of parliament.

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

THE committee of this association, as our readers are aware, circulated in the month of May last, an Address to the Attorneys and Solicitors both in town and country: pointing out the occasion which gave rise to the association, and the objects proposed to be effected as well for the benefit of the *public* as the profession.

Amidst the multitude of prospectuses and circulars which the penny-postage has created, there was reason to apprehend that this legal Manifesto had not secured the attention of many whose interests are deeply involved in the success of the association. Considered in reference to the extensive nature of professional grievances, the address was by no means too elaborate; yet probably it did not at first receive a very attentive perusal from those whose time is engrossed in professional duties; the committee therefore deemed it expedient to issue a more condensed statement, to which they invited the earnest attention of every attorney and solicitor throughout the kingdom.

Although this second appeal has, we understand, been very numerously responded to, we would venture most earnestly to press upon the consideration of those who have not yet sent in their adhesion, to lose no time in so doing, if they deem the *protection of their just rights and the improved administration of justice* to be objects of sufficient importance to deserve their support.

We know how difficult it is to arouse the members of the profession to a due appreciation of their personal interests; and we shall be excused therefore for reiterating our exhortations towards a greater degree of zeal than has hitherto prevailed.

### PROPOSED ALTERATIONS IN THE LAW OF MARRIAGE.

CHANGES in the law are produced from various causes: sometimes from a love of change, unguided by experience or prudence, with little motive beyond restlessness, vanity, or pride; at other times in the hope that change, whilst it displaces many, will find room for some who seek for preferment to which neither their industry nor attainments entitle them. Other changes arise from a sense of injury—a deprivation of freedom of action.

This is the time for the assertion of whatever is right, and the "putting down" of whatever is wrong. But the claimants and the opponents must prepare themselves for a stout conflict.

Amongst other projected alterations in the law, our readers will recollect\* that a royal commission was issued on the 28th June last, to inquire into the state of the law relating to marriages in the Queen's dominions and in foreign countries. It is fit that before any further alteration takes place in this essential part of our domestic jurisprudence due inquiries should be made into the effect of the present state of the law, and we are glad to find that solicitors so able and respectable as Messrs. Crowder & Maynard are engaged in collecting the facts and circumstances which are essential to elucidate the subject and enable the legislature to come to a conclusion at once just and expedient, as well towards the community as individuals.

Experience having shown the difficulty of eliciting information from parties interested, except under the seal of confidence, on account of the extreme delicacy of the position in which such parties are placed, inquiry was made by the solicitors whether communications would be received *confidentially*, where parties required it, and the secretary to the commission returned the following answer, dated the 13th July:—

"I am authorised by the commissioners for inquiring into the state and operation of the law of marriage to inform you, that communications made to them shall be received by them *confidentially*, according to your suggestion, wherever the parties making such communications desire it. I have also to request that such communications be made in writing, and addressed to me as 'Secretary to the Law of Marriage Commission,' under cover to the 'Secretary of State for the Home Department, Whitehall.' I am desired by the commissioners to add their suggestion, that the com-

munications so addressed to them should be confined as far as possible to information regarding the *facts* which may have a bearing on the subject of their inquiry: especially as to the number of marriages within the prohibited degrees of affinity, in the districts in regard to which the writer possesses information; and within what particular degrees: in what classes of society such marriages are chiefly contracted: and whether the number of such marriages has diminished or increased since the passing of Lord Lyndhurst's Act in 1835.

(Signed,) HERMAN MERIVALE,  
*Secretary to the Commission.*

[We shall state the reasons for the proposed change in the next or an early number.—Ed.]

### IMPROVEMENTS IN LEGAL ARCHITECTURE.

WE are glad to observe, that during the present long vacation some material progress will be made in the improvement of our legal edifices. In the Temple, the remainder of Paper Buildings and the low-built offices at the foot of King's Bench Walk, will be removed. A terrace will be constructed, throwing open an extended view of the Thames, and a new building erected towards the river front.

Whilst these measures are in progress in the Inns of Court, the Incorporated Society of Attorneys is preparing to extend their Hall and Library in Chancery Lane. Some years ago two houses were purchased on the north of the portico, and very recently an additional purchase was made on the south side. Two wings are to be constructed of corresponding dimensions:—the building will thus be greatly improved in its exterior appearance, and the additional space will be appropriated to enlarge the library and offices of business,—rendered necessary by the examination and registration of attorneys.

The most important of all the Law Buildings will be the Public Record Office on the Rolls' Estate,—preparations for which we hope to see ere long.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Rolls Court.

*The Merchant Tailors' Company.* August 2nd, 1847.

2 & 3 VICT. c. civil.—COSTS.—INVESTMENT.

*The circumstance of a party having made*

\* See p. 291, ante.

*three applications for the investment in land of different portions of the purchase money of lands taken under an act of parliament, is not sufficient to induce the court to refuse him the costs of a fourth application to invest the residue in the funds.*

THIS was a petition for the investment in consols of a sum of 537*l.*, the remainder of a sum of 5,000*l.* paid into court for land taken under the 2 & 3 Vict. c. cvii., the London Bridge Approaches Act. The only question raised was with respect to the costs of the application. The act enables the court to order the payment of all costs, charges, and expenses of the investment of the purchase money in real or government securities, and the reinvestment of the same, or the securities purchased therewith, in the purchase of other hereditaments, with the necessary costs, charges, and expenses of obtaining all proper orders and all other proceedings for such purposes, except such as may be occasioned by litigation between the claimants. The opposition to the payment of the petitioners' costs was rested upon the circumstance of their having previously obtained the costs of three petitions for the investment of other portions of the same fund in land. It was said to be unreasonable that the petitioners, who might have had this small balance paid out to them upon their last petition, and invested it as they pleased, should now ask for the costs of a new petition to procure its investment.

Mr. Lewis for the petition.

Mr. Randall contra.

Lord Langdale said, that the corporation of London had an act which gave them the power of taking the property of other persons, under certain conditions for making them compensation. It was thought right that the persons whose land was taken under the powers of the act should have the option of reinvesting it in land, and be paid all their costs. He had before said in similar cases, that if a right of this nature was vexatiously exercised, he should refuse to give the party guilty of such vexatious conduct his costs. But then circumstances must be specially brought forward to show such conduct. The mere circumstance that a party had made several distinct applications for the investment of the purchase money, did not in his opinion amount to it. It was impossible, with a due regard to the interests of the party to whom compensation was to be made, to limit him to any particular number of applications.

Vice-Chancellor of England.

*Carpenter v. Bott.* June 30th, 1847.

CONSTRUCTION OF WILL.—CHANGE OF NAME.—NEXT OF KIN.

*Where a testator by will gave certain trust funds and securities to be divided between his next of kin "of the surname of Crump*

*who should be living at the time of the decease of his niece" therein named: Held, that one of the female next of kin who at the date of the will fully answered the description, but who had afterwards changed her name by marriage, was entitled to a share of the property.*

MR. CRUMP, by his will dated May, 1794, after making several bequests, gave a legacy of 5,000*l.* to his niece S. Price; the will then proceeded,—“And in case my niece shall not live to attain the age of twenty-one years, or marry, and shall die without leaving lawful issue of her body living at her decease, or if living, if all such issue shall die before attaining twenty-one years, if sons, at the like age, or marriage, if daughters, then my will is, and I hereby direct, that four equal fifth parts of the said last-mentioned trust funds or securities shall belong to, and be divisible and divided among, my next of kin of the surname of Crump who shall be living at the time of the decease of my said niece, if then leaving no issue living as aforesaid, or if leaving issue then living, at the time of the decease of the surviving or only child, if dying before attaining the age of twenty-one years, or marriage, in like manner as if my said next of kin had become entitled thereto under the Statute of Distributions of Intestates' Personal Estates.” All the residue of the testator's personal property was left to his brother. A reference had been made to the Master to ascertain who answered the description of next of kin under the above clause in the will, and he by his report had excluded a Mrs. Carpenter, the wife of the plaintiff, whose maiden name at the time of the date of the will was Crump, on the ground that she had changed her name and forfeited her right. To this report exceptions were taken, and the question now came on for the decision of the court.

Mr. J. Parker and Mr. J. Adams, for the plaintiff, contended, that the description of person to take was clearly pointed out by the testator, and that the mere change of name was not material, relying on the case of *Pyot v. Pyot*, 1 Ves. sen. 335, before Lord Hardwicke.

Mr. Bethell and Mr. Tripp, contra, cited *Leigh v. Leigh*, 15 Ves. 92; and *Doe v. Plumptre*, 3 Barn. & Ald. 474.

The Vice-Chancellor said, it appeared to him that in order to give the party a title to the legacy she must have all the qualities taken together, and not separately, and must not take by reason of being next of kin only. In the case of *Pygot v. Pygot*, Lord Hardwicke held, that all other requisites being answered, a change of name by marriage did not exclude, and the only question here was, whether the extraordinary expression “of the surname of Crump” was to be taken as equivalent to what Lord Hardwicke considered to be the rule in that case, and his opinion was, that the case did fall within the rule there laid down, and that consequently the plaintiff was entitled to the legacy.

Vice-Chancellor Knight Bruce.

Clarke v. Clarke. March 10th, 1847.

TAKING BILL PRO CONFESSO UNDER 77TH AND 78TH ORDER OF MAY, 1845.

*Where a defendant who had appeared but did not answer, and could not be found, the bill was taken pro confesso.*

Shebbeare moved that the bill be taken *pro confesso* against a defendant who had appeared on the 29th of June, 1846, but had not since put in his answer. At the time of his appearance he was residing at Fladong's Hotel, in Oxford Street, but he was not there and could not be heard of elsewhere. On the 4th of February, an attachment was issued against him for want of an answer, and on the 22nd of February notice of this motion was served upon the solicitor who had before acted for him.

The Vice-Chancellor directed the bill to be taken *pro confesso* on the second cause day in Easter Term, but the order was to be without prejudice to any application the defendant might make in the meantime.

#### Queen's Bench.

(Before the Four Judges.)

Wood v. Mytton. 12th June, 1847.

#### PROMISSORY NOTE.—INDORSEMENT.

A. made a note in the form of a promissory note, payable to his own order; he indorsed it to B. Held, that A. might be sued upon this as a promissory note on which he was legally liable under the statute 3 & 4 Anne, c. 9.

THIS was an action on a promissory note made by the defendant for the sum of 600*l.* payable to the order of himself four months after date. The plaintiff was the indorsee of the note. The cause was tried at the sittings after Trinity Term, 1846, when the defence set up was, that this and other notes had been obtained from the defendant by fraud, but the evidence being deemed insufficient to support this defence, a verdict was given for the plaintiff in the Michaelmas Term following.

Mr. Serjeant Shee applied for a rule to arrest the judgment. The right to maintain an action upon promissory notes depends entirely upon the statute of Anne, (3 & 4 Anne, c. 9); and unless a note is in the form recognised by that statute, it cannot be treated as an instrument enforceable at law. That statute recites, that "it hath been held that notes in writing, signed by the party who makes the same, whereby such party promises to pay unto any other person, or his order, any sum of money therein mentioned, are not assignable," &c., "and that such person to whom the sum of money mentioned in such note is payable cannot maintain an action by the custom of merchants against the person who first made and signed the same." Having thus described the particular sort of notes intended to be made the

subject of legislation, the statute proceeds to declare, that "with the intent to encourage trade and commerce, which will be much advanced if such notes shall have the effect of inland bills of exchange;" and then it enacts, "that all notes in writing that shall be made and signed by any person, &c., whereby such person, &c., doth or shall promise to pay to any other person, &c., any sum of money," shall be capable of being enforced like bills of exchange. It is plain upon all the parts of this statute—the recital of the evil, the declaration of the necessity for a remedy, and the enactment itself—that the intention of the legislature was wholly confined to those notes by which the maker promises to pay to some other person the sum of money specified in the note, and that a promise to pay to his own order was not one which the legislature contemplated. It is therefore not one in respect of which an action can be maintained, for as the right of action depends exclusively on that statute, (per Lord Tenterden, in *De la Chaumette v. The Bank of England*,<sup>a</sup>) the case in which its provisions can be appealed to must be one which strictly falls within them.

Mr. Montagu Chambers and Mr. Wordsworth showed cause. This note is in itself a negotiable instrument. The statute of Anne did not invest such instruments with negotiability, for that they possessed by the custom of merchants, but extended to the holders of instruments that by the custom of merchants were negotiable the means of suing upon them at law. If, therefore, this note is in itself a negotiable instrument, this action is maintainable. But besides this, it is submitted, that under the very terms of the enacting part of the statute this is a note on which an action may be maintained. The words of the act, no doubt, are, "doth promise to pay to any other person or persons, body politic and corporate, his her or their order;" but having exhausted this class of notes, the act then goes on "or unto bearer." This is the description of a new class of notes, and the section may be read thus,—"*doth promise to pay unto bearer.*" Here the maker does promise to pay unto bearer, for the person in whose favour he makes the order is in other words the bearer of the note. It is in fact a note payable to bearer, which is a description of note expressly mentioned in the first part of the enactment. But a later part of the section enacts, that "any person or persons to whom such note that is payable to any person or persons, his, her, or their orders is indorsed, or the money therein mentioned ordered to be paid by indorsement thereon, and shall maintain an action." Here the note has been indorsed by the defendant. That indorsement is a designation of the person to whom under the order of the defendant the note is to be payable, so that if doubtful before, the doubt is now at an end, and the plaintiff is entitled to recover under the very words of the statute in virtue of this indorse-



ment which itself creates a contract and a liability.

Mr. Serjeant *Shee* in support of the rule. This note is not payable to the bearer. There are no such words on the face of the instrument, and the court will not supply them by inference in order to enable the plaintiff to succeed in this action. It is simply a note payable to some one who may never be named as payee of the note, for the maker may never designate any person as the person to whom he will give his "order." The note is not negotiable in itself, for it does not name any one with whom the defendant has contracted to make payment. There is no contract on the face of the note, for it does not show in whose favour it is made, (*Champion v. Plummer*,<sup>b</sup>) and a man cannot contract with himself, and here he has not named any other person. The note is therefore invalid in itself, and it cannot be made valid by mere indorsement. The only notes on which actions are maintainable are those which are within the description contained in the statute, and this note is not of that number. The Court of Exchequer has already taken this view of the law in *Flight v. Maclean*,<sup>c</sup> and that case must be considered decisive of the present.

Lord *Deaman*, (June 12,) delivered judgment. His lordship stated the nature of the action, the objection to the plaintiff's right to recover, and read the first section of the statute, noticing the manner in which its provisions had been relied on by the defendant's counsel. He then added, "But one part of the section, that which declares the indorsee entitled to sue upon promissory notes, does not, like the first portion of the section, adopt the description of the note as an instrument made by one person and payable to 'another person,' but leaves the description general, and gives the right to sue to the indorsee in virtue of the indorsement. We do not think we are bound to say that the restrictive description of the note is, under such circumstances, conclusively binding. The intention of the legislature was to make persons legally liable to pay that which they by a written promise formally promised to pay, and we think we are best effectuating the intentions of the legislature and promoting justice by giving to the clause the construction we do, namely, that a note in this form and thus indorsed by the maker is capable of being sued upon. We were pressed with the case of *Flight v. Maclean*,<sup>c</sup> where the judgment of the Court of Exchequer was upon a count founded on a note of this kind unfavourable to the plaintiff. But this construction of the statute was not in that case called to the attention of the court, and the decision on this point became the less material because upon another point the whole case was really decided. As a different decision from that which we now give would render void transactions that have long

been considered valid, operate only to protect persons in breaking promises to which they had formally pledged their credit, and enable a debtor to defeat a just creditor, we have not felt inclined to adopt it. The rule for arresting the judgment will be discharged.

### Court of Exchequer.

*Bromage v. Lloyd*. Trinity Term, 28th May, 1847.

#### PROMISSORY NOTE.—INDORSEMENT.—TESTATOR.—EXECUTOR.

*The payee of a promissory note payable to order indorsed his name upon it, and died without delivering it. His executors afterwards delivered the note so indorsed to the plaintiff. Held, that the plaintiff had no title to sue upon the note.*

THIS was an action by indorsee against maker of a promissory note payable to the order of one *Herries*. The declaration stated the making of the note, and that whilst it was in the possession of the payee he indorsed it, and afterwards died without making any delivery thereof, and that after his death his executor delivered it to the plaintiff. To this declaration there was a general demurrer.

*Phipson* in support of the demurrer. The plaintiff has no title to sue on the note. The indorsement of the payee was a mere inchoate act. *Murston v. Allen*, 8 M. & W. 494. He indorsed without delivery, and his executors delivered without indorsing. The delivery by the executor could not render complete the imperfect indorsement of his testator. If a party sealed a bond and died without delivering it, a delivery by his executor would not make it the deed of the testator. So if a person made a note in blank and died, his executor could not, by filling up the blanks, make it the note of the testator. A promissory note by which the makers as executors promise to pay renders them personally liable. *Childs v. Monins*, 2 Brod. & Bing. 460.

The Court called on

*Keating* contra. There is a sufficient allegation of the transfer of the note, as it is stated that the payee indorsed it, and upon general demurrer that must be taken to mean that he not only wrote his name upon it but also delivered it. *Hammond v. Colls*, 1 Com. B. Rep. 916. But even if the statement of indorsement means that the testator merely wrote his name upon the note, the subsequent delivery by the executor would pass the property in the note. It has been decided that where a testator delivers a note without indorsing it, an indorsement by his executor has relation to the delivery, and gives a valid title. *Watkins v. Maule*, 2 Jac. & Walk. 237. An executor may ratify the act of his testator, for the law knows no interval between the testator's death and the vesting of the right in his representative. *Whitehead v. Taylor*, 10 Adol. & E. 212.

*Phipson* replied.

*Pollock*, C. B. The writing of his name by the testator and the delivery by the executor do

<sup>b</sup> 1 New Rep. 252.

<sup>c</sup> 16 Mee. & W. 51; 16 Law Jour. N. S. Ex. 23.

not constitute an indorsement, and the person to whom the note is so delivered has no right of action. There must be judgment for the defendant.

*Alderson, B.* The promissory note was made payable to the testator, or his order, that means *the order in writing*. Here the testator has given no order, though he has written: the executor has given an order, but not in writing. The two acts being bad do not make one good indorsement.

*Rolfe and Platt, Bs.* concurred.

Judgment for defendant.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### Common Law Courts.

#### CONSTRUCTION OF STATUTES.

[Concluded from p. 428, *ante*.]

##### FIRST FRUITS.

*Profits during vacancy of prebend.—Ecclesiastical Commission Acts.*—Statute 28 H. 8, c. 11, s. 3, enacts that the tithes, fruits, &c., emoluments, &c., "and all other whatsoever revenues, casualties, or profits, certain and uncertain, offering or belonging to any prebend," &c., "growing, rising, or coming during the time of vacation of the same," shall belong to the person next presented, towards the payment of the first fruits to the crown.

Statute 5 & 6 W. 4, c. 30, reciting that the King had issued a commission of inquiry into ecclesiastical matters, and had signified his intention to defer nomination to any prebend, &c., till the commissioners had considered the circumstances connected therewith, enacted, (sect. 1,) that, where any prebend, &c., in the patronage of his Majesty, should, during the existence of the commission, become vacant, all profits and emoluments which had arisen or accrued, and should arise and accrue, from every such vacant prebend, &c., whether from lands, &c., to the same belonging, or from rents, &c., dividends or emoluments belonging to any chapter, &c., of which the prebendary, &c., last in possession was a member, should be paid to the treasurer of Queen Anne's bounty, who (sect. 2) should keep an account thereof, and "retain the balance in his hands until he shall be otherwise ordered by competent authority." But that nothing in the act should prevent the King from appointing a successor to any prebend, &c., which had or should become vacant, in case he should think proper.

Afterwards a prebend in the gift of the Crown became vacant.

During the vacancy, stat. 6 & 7 W. 4, c. 67, enacted that no appointment should be made to any prebend, &c., (describing a class comprehending the prebend in question).

Statute 1 & 2 Vict. c. 108, enacted, that the statute last-mentioned should not be construed to prevent the Crown from appointing R. to any prebend then vacant.

Afterwards R. was appointed to the prebend in question.

—After such appointment, stat. 3 & 4 Vict. c. 113, repealed stats. 5 & 6 W. 4, c. 30, and 6 & 7 W. 4, c. 67, and enacted, that the treasurer should pay to the commissioners (the commission being still in force) all moneys remaining in his hands.

*Held*, by the Court of Queen's Bench, that R. was entitled to recover from the treasurer all moneys arising from profits of the prebend, comprehended in stat. 28 H. 8, c. 11, s. 3, which had come to the treasurer's hands between the occurrence of the vacancy and the appointment of R., and which R. had demanded of the treasurer before the passing of stat. 3 & 4 Vict. c. 113. But,

*Held*, by the Court of Exchequer Chamber, that on a special verdict, finding that certain monies claimed by R. of the treasurer were in the treasurer's hands at the time of the appointment, being the "net profits" of the prebend for the period since the vacancy, it did not appear that "net profits" were comprehended in the description of "all," "whatsoever revenues, casualties or profits, certain and uncertain," &c., in stat. 28 H. 8, c. 11, s. 3, for that this statute would not comprehend a share in the aggregate property in the chapter, but "net profits" might have that meaning: and that, upon such interpretation of the verdict, R. would have no claim. *Repton v. Hodgson*, 7 Q. B. 84.

##### HABEAS CORPUS.

1. *Writ of rebellion.—Contempt.*—Stat. 11 G. 4, and 1 W. 4, c. 36, s. 15. — A court of equity committed a party, under a writ of rebellion. The commitment, which was regular in other respects, omitted the date of the return to the writ of rebellion; and it was suggested, on motion for *habeas corpus*, that this omission had the effect of concealing the falseness of the return; *Held*, no ground for a *habeas corpus*, but only for an application to the court of equity.

The same *held*, as to a suggestion, that the imprisonment was by collusion of the plaintiff in the equity suit, and the commissioner under the writ.

When a party has been brought to the bar of a Court of Equity to answer a contempt, the Court of Equity may commit him from the sheriff's custody without process of *habeas corpus*, rule 5 of stat. 11 G. 4, and 1 W. 4, c. 36, s. 15, applying only where the party has not been so brought up.

A commitment for contempt by a Court of Equity need not adjudicate the contempt; it is enough if it recite such an adjudication.

Where, upon a prisoner being brought up by *habeas corpus ad subjiciendum*, it appears that he is detained for a legitimate cause, the court will not inquire whether another cause, on which also he is detained, be legitimate.

When the detention is objected to solely on the ground of an alleged impropriety in the details of a suit in an equity court which has committed the prisoner, the court will not interfere. *Cobbett, in re*, 7 Q. B. 187.

2. *Commitment under 8 & 9 Vict. c. 127.*—

Under the 8 & 9 Vict. c. 127, s. 1, a party may be imprisoned for nonpayment of a debt not exceeding 20*l.* due upon a judgment, although the judgment debt originally exceeded 20*l.*

A warrant of commitment under the 8 & 9 Vict. c. 127, by the judge of the Palace Court, ordered that a defendant should be committed for the term of 20 days to the common gaol wherein debtors under judgment and in execution of the superior courts of justice may be confined in the county of Surrey; and was directed to *H. H.*, an officer of the said court, and to the keeper of the debtors' prison above-mentioned for the county of Surrey; and the defendant was imprisoned under it in Horse-monger Gaol, being the only debtors' prison for the county of Surrey.

*Held*, 1st, that the warrant was properly directed to, and executed by, *H. H.*, notwithstanding section 13 of the act, saving the right of the high bailiff of Westminster to the execution of process; 2ndly, that the 20 days' imprisonment began to run from the time of the defendant's being actually lodged in prison under the warrant; and 3rdly, that the place of imprisonment was sufficiently designated in the warrant. *Ex parte Foulkes*, 15 M. & W. 612.

3. *Lunatic*.—The return to a *habeas corpus* to bring up the body of an alleged lunatic, stated, that "on, &c., under the authority and in pursuance of the act of parliament," &c. (2 & 3 W. 4, c. 107,) "*R. F.*, in the said writ named, was committed under our custody, and was received into and detained in the Newcastle Lunatic Asylum," &c., and that "on the day and year aforesaid," an order and medical certificates were received, which were as follow:

It then set out the order and the reception of the lunatic, with the signature of the patient himself at the foot of it, instead of that of his wife, who was the party named in it as giving the order, and who had also signed the order in a different place; and also medical certificates. It likewise set out a subsequent order under the 8 & 9 Vict. c. 100, and medical certificates, and justified the detainer of the lunatic under the latter order.

*Held*, that it sufficiently appeared, on the face of the return, that the first order and medical certificates were received at the same time with the lunatic; that under the 2 & 3 W. 4, c. 107, the first order was a sufficient justification of the detainer, that it was not necessary to obtain an order for his detainer under the 8 & 9 Vict. c. 100; and that the return need not show who delivered the first order.

*Semle*, that a medical certificate under 8 & 9 Vict. c. 100, s. 46, should state specific facts on which the opinion of insanity has been formed, and that therefore the statement that the patient has "a general suspicion of the motives of every person," is insufficient. *Fell, in re*, 3 D. & L. 573.

#### HIGHWAY ACT.

*Notice of action to surveyor*.—The defendant, having been appointed a surveyor of the highways by the inhabitants in vestry, but in-

formally, cut down, in the supposed exercise of his duty as surveyor, a tree which was overhanging the highway so as to be a nuisance to it: *Held*, that he was entitled to the protection of the stat. 5 & 6 W. 4, c. 50, s. 109. *Huggins v. Waydey*, 15 M. & W. 357.

Case cited in the judgment: *Hughes v. Buckland*, 15 M. & W. 346.

#### INDICTMENT.

*Contra formam statuti*.—Stat. 7 & 8 G. 4, c. 29, s. 25, enacts, "That if any person shall steal any horse, mare," &c., "or shall wilfully kill any of such cattle, with intent to steal the carcase," &c., "every such offender shall be guilty of felony," and, on conviction, suffer death. Stat. 2 & 3 W. 4, c. 62, s. 1, reduces the punishment to transportation for life: and stat. 7 W. 4, and 1 Vict. c. 90, s. 1, to transportation for not less than 10, nor more than 15 years.

An indictment charged defendant with feloniously stealing a mare, saddle and bridle, and did not conclude *contra formam statuti*: a general verdict of guilty was found.

*Held*, that as stealing the mare, as well as stealing saddle and bridle, was a felony at common law, and not created, or altered in its nature, by statute, the offence was correctly described in the indictment, and the statutable punishment of 15 years' transportation would attach to the stealing the mare. *Williams v. The Queen*, 7 Q. B. 250.

Case cited in the judgment: *Rex v. Mathews*, 5 T. R. 162.

#### INSOLVENT.

1. *Personal service after vesting order*.—An assignee of an insolvent cannot maintain an action for money due for the personal services of the insolvent performed by him after the date of the vesting order.

The 37th section of the 1 & 2 Vict. c. 110, does not pass to the insolvent's assignees the right to the profits of such services. *Williams, assignee, v. Chambers*, 33 L. O. 526.

2. *Interim order*.—Where an insolvent has obtained an order under the 7 & 8 Vict. c. 96, s. 22, his person only is protected from process, and, consequently, such an order is no bar to an action for a debt existing previous to its being made. *Toomer v. Gingell*, 4 D. & L. 182.

#### INTEREST.

*Judgment debt, from what time it runs*.—Interest runs on a judgment debt, under the stat. 1 & 2 Vict. c. 110, s. 17, from the time of the entry of the *incipitur*, and not merely from the final completion of the judgment, after the taxation of costs. *Newton v. Grand Junction Railway Company*, 16 M. & W. 139.

Case cited in the judgment: *Fisher v. Dudding*, 3 Scott, N. R. 516; 9 Dowl. P. C. 372.

#### INTERPLEADER ACT.

1. *Entering judgment*.—On verdict upon a feigned issue under the Interpleader Act, 1 & 2 W. 4, c. 58, judgment ought not to be entered up as in an ordinary suit, and, if so entered, is a nullity and may be set aside at any time.

The judgment must be entered up in the mode directed by the statute. *Diokenson v. Eyre*, 7 Q. B. 307, n.

2. *Rule.—Trespass.*—Under a *fi. fa.* against goods of *M.*, the sheriff entered the apartments of *H.*, who was a lodger in the house of *M.*, and there seized certain goods. *H.* claimed them, and the sheriff applied to the Court of Exchequer, out of which the *fi. fa.* issued, for relief under the 1 & 2 W. 4, c. 53, s. 6, (the Interpleader Act). An issue was directed to try the right to the goods, and in it *H.* succeeded. *H.* afterwards brought an action of trespass in this court for entering the apartment. The court refused to stay proceedings in that action, as the order made in the Exchequer in the action there only affected the goods seized, and did not extend to the trespass which formed the subject of the latter action.

*Semble*, that if the interpleader order did extend to such a case, the proper course was, for the sheriff to apply to the Court of Exchequer. *Hollier v. Laurie*, 4 D. & L. 205.

Cases cited in the judgment: *Semayne's case*, 5 Rep. 92, a.; *Lawrence v. Mathews*, 5 Dowl. 149.

#### JUDGMENT DEBT.

*Judge's order, application to rescind.*—The East India Company granted a pension to defendant in consideration of his distressed state and the services of his father. *Held*, that this could not be charged with a judgment debt by a judge's order under stat. 1 & 2 Vict. c. 110, ss. 14, 15.

The judge's order directed that the pension should stand charged unless cause were shown at chambers in six calendar months. The court rescinded the order, on motion by the East India Company, and by an assignee of the pension, within the six months. *Morris v. Manesty*, 7 Q. B. 674.

And see *Interest*.

#### LIMITATIONS, STATUTE OF.

1. *Continuing writs.—Pleading.*—In an action on a bill of exchange, dated in May, 1838, the original writ of summons into Middlesex was issued on the 15th of August, 1844; on the 4th of Jan. 1845, it was returned *non est inventus*, and filed, and entered on record; on the same day an alias writ of summons was issued into Middlesex; on the 10th June, 1845, a pluries writ of summons was issued into Surrey, and served the same day, and the defendant duly appeared to it; the plaintiff declared, and the defendant pleaded, that the cause of action did not accrue within 6 years next before the commencement of the suit. The alias writ of summons was not in fact returned or entered of record till the 4th June, 1845. The N. P. record was made up, stating only that the defendant was summoned to answer the plaintiff by virtue of a writ issued on the 15th day of August, 1844, and on its production at the trial the plaintiff obtained a verdict.

The court held, that the provisions of the stat. 2 W. 4, c. 39, s. 10, had not been complied

with, and made absolute a rule to amend the N. P. record, by stating the continuances according to the truth, at the costs of the plaintiff.

Where a writ issued within six years after the cause of action accrued has not been duly continued, pursuant to the 2 W. 4, c. 39, s. 10, the defendant is not bound to plead such non-continuance specially, but may take advantage of it under the general plea, that the course of action did not accrue within six years next before the commencement of the suit; for, for this purpose, the last writ which is served, is the commencement of the suit. *Pratt v. Hawkins*, 15 M. & W. 399.

2. *Tithes.*—The Limitation Act, 3 & 4 W. 4, c. 27, s. 2, enacts, that no person shall bring an action to recover any land (which, by s. 1, includes tithes,) but within 20 years next after the right to bring such action has accrued to him, or some person through whom he claims: *Held*, that this stat. does not operate to prevent the tithe-owner from recovering tithes *as chattels* from the occupier, although none had been set out for 20 years; but that it is confined to cases where there are two parties, each claiming an adverse estate in the tithes. *Dean and Chapter of Ely v. Cash*, 15 M. & W. 617.

Case cited in the judgment: *Grant v. Ellis*, 9 M. & W. 113.

3. *Time how computed.*—Where costs are incurred in a suit, the Statute of Limitations does not begin to run against the earlier items until the suit is terminated. *Martindale v. Falkner*, 2 C. B. 706.

4. *Amendment of process.*—In order to save the Statute of Limitations, the court will allow an alias and pluries writ of summons to be amended, by inserting therein the date of the first writ and return thereto. *Culverwell v. Nugee*, 4 D. & L. 30.

#### LUNATIC.

1. *Appeal against order of removal.*—9 G. 4, c. 40.—8 & 9 Vict. c. 126.—An order of removal of a lunatic pauper under 9 G. 4, c. 40, s. 42, was made on the 9th of July, 1845, and on the 8th of August the 8 & 9 Vict. c. 126, came into force, which repeals the former act "except as to any matters committed or done before the passing of this act, which shall be as if this act had not passed:" *Held*, that the right to appeal under sects. 46 and 54 of the former act was not taken away.

An appeal against an order under 9 G. 4, c. 40, s. 42, is an appeal under sects. 46 and 54, or one of them, and not under sect. 60; and therefore the appellant is not bound to give grounds of appeal under the latter section. *Reg. v. Recorder of York*, 4 D. & L. 376.

2. *Order.—Medical certificate.*—An order for the detention of a lunatic under the 8 & 9 Vict. c. 100, s. 45, is good, although all the particulars enumerated in the form annexed to the act are not set out if the act is substantially complied with.

The form of a medical certificate given in schedule C. is directory only, and an equivalent will suffice. A statement in a certificate, that

a lunatic "labours under delusions of various kinds, and is dirty and indecent in the extreme," is a sufficient statement; and in another certificate, a statement that the medical man forms his opinion from conversations with the lunatic, without describing their purport, was held sufficient. *In re Shuttleworth*, 33 L. O. 304.

## MANDAMUS.

*Insufficient return.—Election of revising assessors.—What elections are made valid.—*Mandamus to the mayor, aldermen, and burgesses of a borough, named in schedule (A.) of stat. 5 & 6 W. 4, c. 76, and divided into wards, recited that no election of assessors to revise the burgess lists with the mayor, in place of the last assessors had been made on or since the 1st March, 1844, by reason whereof the said offices were still vacant: and the writ commanded the mayor, &c., to meet and elect such assessors.

Return, that the mayor, &c., did meet, and were ready to elect, and to deliver and receive voting papers, but there was not at the time of such meeting, nor has there been from thence hitherto, any assessor of the said borough; wherefore they could not elect, &c.,

On demurrer to the return for not stating how and under what circumstances it happened that there was no assessor for the borough at the time, &c., *Held*,

1. That the return was bad for that reason.
2. That the mandamus did not in itself show that the election could be proceeded with.
3. That any omission to appoint assessors might be remedied by an election under stat. 7 W. 4, and 1 Vict. c. 78, s. 26, which extends to officers eligible under that act, and stat. 5 & 6 W. 4, c. 76, the provisions of stat. 11 G. 1, c. 4, ss. 1, 2. And that such election was one of those declared valid by stat. 7 W. 4, and 1 Vict. c. 78, s. 3.

Peremptory mandamus awarded. *Reg v. Mayor of Weymouth*, 7 Q. B. 46.

## MUNICIPAL CORPORATION.

*Election of councillors.—Ordinary and extraordinary vacancies.—*A councillor to fill up an occasional vacancy under stat. 5 & 6 W. 4, c. 76, s. 47, and councillors to replace the third part of the council annually going out of office, ought not to be chosen at one and the same elections. Stat. 7 W. 4, and 1 Vict. c. 78, s. 11, does not prospectively sanction such a proceeding.

An election having been held to fill up an occasional vacancy and the ordinary ones at the same time, a *quo warranto* information was laid against a party claiming to have been elected to fill one of the ordinary vacancies. Issue being joined on averments raising the question whether he was duly elected, it appeared on the trial that voting papers were delivered containing the particulars required by stat. 5 & 6 W. 4, c. 76, s. 32, that the defendant was named in a majority of such papers, and that the presiding alderman and assessor

declared him and two others elected to fill the ordinary vacancies, and a fourth party to fill the occasional one. Defendant endeavoured to show by this and other evidence that the voters understood at the time of the election, which persons were candidates to fill the ordinary and the occasional vacancies respectively, and that they gave their votes accordingly. The judge told the jury that the information which enabled the presiding officers to declare defendant elected to fill an ordinary, and not the occasional vacancy, was by law to be derived from the voting papers alone.

*Held*, on bill of exceptions and writ of error to the Exchequer Chamber, that the direction was right. Judgment for the Crown affirmed. *Rowley v. The Queen*, 6 Q. B. 668.

## PAUPER.

See *Lunatic*.

## PILOTS' ACT.

Stat. 6 G. 4, c. 125, after enacting, (s. 19,) under a penalty, that the master of any vessel bound from the westward to the Thames or Medway shall take certain steps for obtaining a qualified pilot, and (s. 58) shall not act himself as pilot under certain circumstances, provides (s. 62,) that nothing shall subject to any penalty the master, "being the owner or part owner of such ship or vessel, and residing at Dover, Deal, or the Isle of Thanet, for conducting or piloting such his own ship or vessel from any of the places aforesaid, up or down the rivers Thames or Medway, or into or out of any port or place within the jurisdiction of the Cinque Ports"

*Held*, that the words "any of the places aforesaid" mean Dover, Deal, and the Isle of Thanet, and not others previously mentioned in the act. *Peake v. Screech*, 7 Q. B. 603.

## RECORD OF CONVICTION.

Under stat. 7 W. 4, and 1 Vict. c. 90, which enacts, that persons convicted of stealing in a dwelling-house to the value of 5*l.* shall be liable to be transported beyond the seas for any term not exceeding 15 years, nor less than 10 years, judgment (before statute 9 & 10 Vict. c. 24,) of transportation for 7 years was reversed on writ of error.

A record of conviction at the assizes, beginning "Yorkshire to wit," and reciting a commission to justices to hear and determine and deliver the gaol there, and to inquire by the oaths of good and lawful men within the said county of York, set forth an indictment found by A. B., C. D., &c., grand jurors, giving to each (except in one instance) the addition of his residence, but not stating them to be good and lawful men within the county of York, nor making any mention of the county. On writ of error, assigning as a ground that the indictment did not appear to have been found by good and lawful men of the county.

*Semble*, per *Patteson, J.*, that the objection was fatal. *Whitehead v. The Queen*, 7 Q. B. 582.

## REGISTRATION OF DEEDS.

*Lithographed memorial.*—Under stat. 7 Ann. c. 20, the register of Middlesex is bound to register the memorial of a deed, though the body of such memorial is lithographed, if it be properly stamped and executed. *Reg. v. Registers of Middlesex*, 7 Q. B. 156.

## REQUESTS, COURT OF.

*Certificate of probable cause.*—*Suggestion.*—*Writ of trial.*—*Certificate under Court of Requests' Act.*—The sheriff or inferior judge to whom a writ of trial is directed, has no authority to certify, under the (late) Tower Hamlets' Court of Requests Acts, 23 G. 2, c. 30, s. 8, and 2 W. 4, c. lxxv., that there was probable or reasonable cause of action for 5*l.* or more.

By the 7th sect. of the former act, it is enacted, that, if any action be brought elsewhere for a demand cognizable in the local court, and it shall appear to the judge or judges of the court where the action is brought, that the debt to be recovered does not amount to 40*s.*, and the defendant shall duly prove, by sufficient testimony to be allowed by any judge or judges of the court where the action shall depend, that at the time of commencing such action, the defendant was inhabiting a residence within the district, and liable to be warned or summoned before the court of requests for such debt, the said judge or judges shall not allow to the plaintiff any costs, but shall award costs to the defendant. The 8th sect. provides, that when the plaintiff shall, in any action brought in a superior court, obtain a verdict for less than 40*s.*, if the judge or judges who shall try the cause shall certify that there was probable or reasonable cause of action for 40*s.* or more, the plaintiff shall not be liable to pay costs, but shall recover his costs as if that act had not been made.

The 21st section enacts, that no action or suit for any debt not amounting to 40*s.*, and recoverable by virtue of that act in the said court of requests, shall be brought against any person residing or inhabiting within the jurisdiction thereof, in any court whatsoever.

An action having been brought in this court against a party liable to be sued in the local court, and the jury having, on the trial before the secondary of London, found a verdict for less than 5*l.*: *Held*, that the defendant was not bound to avail himself of the prohibitory clause, by plea or by evidence at the trial, but was at liberty, notwithstanding the trial took place before a judge who had no power to certify under sect. 8, afterwards to apply to the court for leave to enter a suggestion under sect. 7. *Capes v. Jones*, 2 C. B. 911.

Cases cited in the judgment: *Shaw v. Oates*, 4 Dowl. P. C. 720; *Bishop v. Marsh*, 6 N. Ca. 12; 8 Scott, 128; 8 Dowl. P. C. 1; *Forbes v. Simmons*, 9 Dowl. P. C. 37.

## REVISING ASSESSORS.

*See Mandamus.*

## SHERIFF.

1. *Poundage.*—*Fees.*—*Extortion.*—A sheriff

is liable, under the 29 Eliz. c. 24, to treble damages for extortion, notwithstanding the 1 Vict. c. 55, allows additional fees.

A declaration framed on the former statute is sufficient: if the defendant relies upon the latter, he must plead it as matter of defence. *Pilkington v. Cook*, 33 L. O. 568.

2. *Extortion.*—*Special demurrer.*—The 1 Vict. c. 55, for increasing the remuneration to be paid to sheriffs on executing process, has not repealed the penalty for extortion imposed by the 29 Eliz. c. 4, and in suing for such penalty it is sufficient to declare upon the stat. of Eliz. If the defendant relies upon the stat. of Vict., he must plead it by way of defence.

A declaration on the stat. of Eliz. stated, that the defendant, by colour of his office, took for executing a writ a large sum of money, to wit, 16*l.* being a larger recompence than by the said stat. is limited, that is to say, a large sum, to wit, 15*l.* more than is by the said act limited, whereby the plaintiff is damaged to the amount of 15*l.*: *Held* bad on special demurrer. *Pilkington v. Cooke*, 4 D. & L. 347.

Cases cited in the judgment: *Davies v. Griffith*, 4 M. & W. 377; *Thibault v. Gibson*, 12 M. & W. 88.

## SHIP.

*Liability for collision.*—The liability of a ship-owner, for the damage done by the collision of his ship with another vessel, is limited, by the stat. 53 G. 3, c. 159, to the value of his ship "at the time of," that is, *immediately before* the collision. He is not, therefore, exempted from liability, when by the same collision his own ship instantly founders. *Brown v. Wilkinson*, 15 M. & W. 39.

Case cited in the judgment: *Wilson v. Dickson*, 2 B. & Ald. 2.

1. *Separate agreement on same paper.*—*A.*, by written contract, agreed to take a public house of *S.*, at a certain rent, and to buy of *S.* all the beer which should be sold and consumed on the premises, under a penalty of 30*l.* for every barrel bought of any other person; and to quit on six months' notice, under a penalty of 30*l.* per month for holding over. At the end of the instrument was written:—"And it is further agreed by *O.*" (who was not previously made a party to the contract), "that he will hold himself responsible for any amount of money which may become due from *A.* to *S.*, that is to say, to the amount of 36*l.*" The names of *S.*, *O.* and *A.* were subscribed: *Held*, in an action by *S.* against *O.* on the guarantee, that a lease stamp was not sufficient, but that an agreement stamp was necessary in respect of *O.*'s guarantee for the payment of penalties. *Wharton v. Walton*, 7 Q. B. 474.

2. *Lease.*—*Agreement.*—*Separate agreement on same paper.*—Agreement dated April 14, 1804, not under seal, between *M.* and *N.*, that *N.* shall rent of *M.* the ferry called *D.* for 6*l.* 6*s.* per annum, to be paid half-yearly, for which *N.* is to have the sole use of the ferry and

whatever may accrue from it for the time he holds the same. "Be it also known that N. has this day bought of M. the great ferry boat for the sum of 20*l.*, of which 5*l.* shall be paid," &c.; instalments of 5*l.* to be paid yearly on April 6th, the 1st in 1805.

*Held*,—1. That the instrument purporting to convey an incorporeal hereditament was not a lease, because not under seal, and therefore did not require a lease stamp.

2. That, as an agreement for a lease, it was not subjected to duty by the clause of stat. 55 G. 3, c. 184, schedule, part 1, tit. Agreement, exempting agreements for leases under the yearly rent of 5*l.*; for that a duty could not be imposed by implication from this exempting clause.

3. That, if the rent only were considered, the subject-matter of the agreement was not of the value of 20*l.*, and therefore no stamp was necessary.

4. That the price of the boat could not be taken into consideration, the agreement as to that not being ancillary to the contract for letting, but being a distinct and separate memorandum of a bygone purchase of goods, and in itself subject to no stamp duty. *Mayfield v. Robinson*, 7 Q. B. 486.

3. *Letter or power of attorney*.—A written authority in the following terms,—“I authorize you to indorse my name to three several bills of exchange now in your possession,” (describing them,) was held to be a *letter or power of attorney*, requiring a 30*s.* stamp under 55 G. 3, c. 184. So, although it goes on to say “and which indorsement I undertake shall be binding upon me; and I undertake to pay you the amount of the several bills as they respectively become due, should they not be duly honoured when mature.” *Walker v. Remmett*, 2 C. B. 850.

Case cited in the judgment: *Reg. v. Kelk*, 12 A. & E. 559; 4 P. & D. 185.

4. *Agreement*.—*Sale of goods*.—The following memorandum was handed by defendant, a trader, to plaintiff, an auctioneer:—“Memorandum of 107*l.* had by me of S., (plaintiff,) being an advance on books sent in for immediate sale by auction.” Signed by the defendant. The books were sold, and an action having been brought by the auctioneer for a balance due to him on the sale, the above memorandum was held to “relate to the sale of goods,” and therefore to be admissible in evidence without a stamp, under the exemption in 55 G. 3, c. 184, sched., tit. “Agreement.” *Southgate v. Bohn*, 16 M. & W. 34.

Case cited in the judgment: *Curry v. Edensor*, 3 T. R. 524.

5. *Railway scrip not “goods, wares, or merchandize.”*—Scrip in a railway company is not “goods, wares, or merchandize,” within the exemption in the Stamp Act, 55 G. 3, c. 184, sched., part 3, tit. Agreement.

In the morning of a day, the defendant gave the plaintiff a verbal order for 50 shares in a railway company. In the afternoon of the

same day, the defendant signed a memorandum that he had bought of the plaintiff 50 shares in the company, at 10*l.* a share; which memorandum was handed to the plaintiff: *Held*, that it required an agreement stamp. *Knight v. Barber*, 16 M. & W. 66.

Cases cited in the judgment: *Vaughton v. Brine*, 1 M. & G. 559; 1 Scott, N. R. 258; *Beeching v. Westbrook*, 8 M. & W. 411; *Humble v. Mitchell*, 11 A. & E. 205.

#### TITHES.

1. *Exemption from, of a party prescribing in non decimando*.—Under 2 & 3 W. 4, c. 100, s. 1, a lay landowner can establish an exemption in *non decimando* by proof of non-payment for one of the periods named in the statute, without showing the legal origin of the exemption; the exemption being claimed, not in respect of all tithes, (as in *Fellows v. Clay*, 4 Q. B. 313; 3 Gale & D. 407.) but in respect of particular articles, some being of modern introduction; per Coltman and Erle, J's, per Tindal, C. J., and Cresswell, J., he cannot. *Salkeld v. Johnson*, 2 C. B. 749.

2. *Modus, what is*.—A prescription for the lord of a manor to hold and enjoy the manor freed and discharged from tithe, on payment to the rector of the annual sum of 40*l.*, in lieu and compensation of all tithes within the manor; and for the lord, in consideration of this payment of 40*l.*, to have, for himself, his heirs and assigns, from the occupiers of lands within the manor, a tenth of all titheable matters within the manor,—is not a “*modus decimandi*, or exemption or discharge from tithes,” within the meaning of the stat. 2 & 3 W. 4, c. 100.

*Quare*, whether such prescription is good in law. *Knight v. Marquis of Waterford*, 15 M. & W. 419.

Cases cited in the judgment: *Pigot v. Hearn*, Cro. Eliz. 599; *Moore*, 483; *Pigot v. Sympton*, Cro. Eliz. 763; *Phillips v. Prytherick*, 3 E. & Y. 1273; *Dykes v. Thompson*, 1 E. & Y. 692; *Bishop of Winchester's case*, 2 Rep. 426.

3. *Arrears before justices*.—Since 5 & 6 W. 4, c. 74, if any tithe, obligation, or composition not excepted in 7 & 8 W. 3, c. 6, or exceeding 10*l.* yearly value, due from any one person, is in arrears, it must be proceeded for before two justices. And if the title of the claimant, or liability of the party sought to be charged is undisputed, two years arrears may be there recovered; whereas, if such title or liability is denied *viva voce* before the justices, or at any time in writing, the claimant may proceed by suit in equity, and recover six years'.

*Robinson v. Purday*, 16 M. & W. 11.

See *Limitations, Statute of*.

#### USURY.

*Interest in land*.—*Replication*.—“*De injurid.*”—*Pleadings*.—To an action of covenant for payment of 250*l.* and interest, the defendant pleaded that the covenant was entered into in pursuance of an usurious contract to pay more than 5*l.* per cent. interest, and that payment was secured by a deed whereby the de-



fendant bargained and sold to the plaintiff the crops of grass growing on certain land. To this plea the plaintiff replied that the contract was entered into after the passing of the 2 & 3 Vict. c. 37. On demurrer to the replication, *Held*, that the plea did not show that the money was secured on an interest in land, inasmuch as the crops of grass might have been sold to the defendant by the owner of the soil on the terms that they were to be cut by him and delivered to the defendant as a personal chattel.

*Held*, also, that in a plea of usury it is sufficient for the defendant to allege that the contract is void under the stat. 2, 12 Anne, c. 16, s. 1; and the plaintiff, in order to take the case out of that statute, must reply that the contract was made after the 2 & 3 Vict. c. 37, and does not relate to land.

*Held*, also, that *de injuriâ* is a good replication to a plea of fraud in an action of covenant. *Washbourne v. Burrows*, 34 L. O. 303.

#### WARRANT OF ATTORNEY.

*Construction of statute* 3 G. 4, c. 39, s. 2.—If a warrant of attorney to confess judgment be given by a party who becomes bankrupt more than 21 days afterwards, and such warrant is not filed under stat. 3 G. 4, c. 39, but judgment is signed within 21 days after the execution of the warrant, a *fi. fu.* under such judgment is valid as against the assignees, though not issued till more than 21 days after the execution of the warrant.

In section 2, the words "unless judgment shall have been signed, or execution issued," cannot be read "unless judgment shall have been signed, and execution issued." *Green v. Wood*, 7 Q. B. 178.

#### WORSTED ACT.

*Variance.—Distribution of penalties.—Form of conviction.*—Under sects. 10 & 11 of stat. 17 G. 3, c. 56, (for preventing frauds, &c. by persons employed in the woollen and other manufactures,) a party may be convicted of having in his possession materials used in such manufactures, and suspected to be purloined or embezzled, and of not accounting for the possession, although such goods have not been found concealed in his dwelling-house, out-house, &c., or in the execution of a search-warrant granted under sect. 10; the offence consisting in the possession itself, not accounted for as the statute requires.

Stat. 58 G. 3, c. 51, describes by their titles and dates several acts relating to persons employed in the woollen and other manufactures, which acts it in part repeals. Among these is an act stated to have been passed in 13 G. 3, but agreeing in title with 17 G. 3, c. 56, and with no act passed in 13 G. 3: *Held*, that this act might be identified by the title with the act recited, and that the legislature must be deemed to have mistaken the date.

And, therefore, that the distribution of penalties under 17 G. 3, c. 56, s. 14, is now regulated by stat. 58 G. 3, c. 51, s. 3.

Stat. 17 G. 3, c. 56, s. 10, empowers two

justices, on complaint, to cause the party charged to be brought before "two justices," who are not required to be the same two; and enacts, that if such party shall not give a satisfactory account to these justices, he shall be convicted, &c.

*Held*, that the conviction in such case must state, as required by the subsequent act, 3 G. 4, c. 23, s. 2, that the complaint was made to different justices from those who determined it. Although stat. 17 G. 3, c. 56, gives a general form of conviction, not requiring any particular statement as to the justices who first heard or who determined the complaint. And a conviction under this act was quashed for omitting such statement. *Reg v. Wilcock*, 7 Q. B. 317.

### PRACTICE AT THE JUDGES' CHAMBERS.

#### ASSIGNING A GUARDIAN FOR AN INFANT.

ACTION on the case against *A. B.* and *C.* his wife. *C.* was of age, *A. B.* an infant. The question was, how were the defendants to appear and defend? The infant could not appoint an attorney for the wife, and she could not appoint one herself, (Co. Litt. 135). Upon the usual form of petition to assign guardian, altered to meet the circumstances, and a consent by the guardian to defend for both the defendants,

Mr. Baron *Platt*, after hearing a statement of the facts, made the following order:—

*F. G.* } Upon reading the petition of  
v. } *A. B.* and the affidavit of *H. I.*,  
*A. B.* and } I do admit *I. K.*, of, &c., to  
*C.* his wife. } defend this action for the defendant  
*A. B.*, (who is an infant under the age of 21 years,) and also for *C.*, the wife of the said *A. B.*, during the minority of the said *A. B.* as his guardian.

### THE EDITOR'S LETTER BOX.

THE entire list of the *Public General Statutes* of the last session was given in the last number. The extraordinary length of the *List of Local and Personal Acts* will render it necessary to divide it.

Every statute of the session in any way useful or interesting to the profession, either has been already, or will be, given verbatim.

The Notes or Commentary on the Bankruptcy and Insolvency Act will be found at p. 429, *ante*.

The Letter from Birmingham has been received.

We are obliged to our learned correspondent *M. W.*, and will attend to his friendly suggestions.

The *Legal Almanac, Year-Book, and Diary* for 1848, much enlarged and improved, will be published early in November. Information and suggestions should be sent early.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, SEPTEMBER 11, 1847.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

## EXPENSES OF WITNESSES AND COSTS OF ELECTION PETITIONS.

THE summary of the Law of Elections and Election Petitions, submitted to our readers in preceding numbers, would be incomplete, if the expenses of witnesses summoned to give evidence before election committees, and the costs incidental to election petitions, remained without notice.

As already intimated, the witnesses proposed to be examined before a select committee may be summoned, either by the Speaker's warrant, issued by virtue of a general order, before the select committee has been constituted, or by the order of the chairman of the select committee. In either event, it is expected that the witness's travelling expenses should be tendered or paid before he is called on to appear before the committee; and if this precaution has not been taken, the witness may refuse to give his testimony. Other expenses of witnesses, for loss of time, &c., are the proper subject of taxation, and are recoverable from the party liable to pay the same in the same manner as the ordinary costs of election petitions, as hereafter stated.

The stat. 7 & 8 Vict. c. 103, expressly provides in what cases costs shall be payable from one party to the other, in the event of a controverted election and petition. The cases with respect to which

provision is made by the statute are:—1st, Where costs are incurred by parties in opposing a frivolous and vexatious petition; 2ndly, When the opposition to a petition is declared to be frivolous and vexatious; 3rdly, Where no party appears to oppose a petition complaining of an election or return which the committee declare to be vexatious or corrupt; 4thly, Where objections are taken to the votes of particular voters, which the committee pronounce frivolous or vexatious; and lastly, Where costs are incurred with respect to specific allegations made before a committee, without reasonable or probable grounds.

In the first four cases enumerated, the obligation to pay and the right to receive costs arise upon the report made by the select committee to the house. If the committee report, that the petition referred to them appeared to be frivolous or vexatious, the parties who appeared before the committee in opposition to the petition are entitled, without more, to recover from the persons, or any of them, who signed the petition, "the full costs and expenses which such party shall have incurred in opposing the same."<sup>b</sup> So, if the committee report that the opposition to a petition appeared to be frivolous or vexatious, the petitioners shall be entitled to recover from the parties opposing, with respect to whom such report shall be made, "the full costs and expenses which such petitioner or petitioners shall respectively have incurred in prosecuting their petition." Where no party appears before a committee to oppose a petition complain-

\* *Hertford case*, 1 Per. & Kn. 561; *Norwich case*, id. 573; *Southampton case*, Bar. & Aust. 380; *Lyne Regis*, id. 460.

ing of an election or return, and the sitting member or members have not given notice of their intention not to defend, and the committee report to the house that the election or return appeared to them to be vexatious or corrupt, the petitioners shall be entitled to recover, either from the sitting members, if any, or from any person admitted by the house to oppose the petition, the costs incurred in prosecuting such petition. In the fourth case above referred to, when an objection is stated against the name of a voter, and the committee is of opinion that such objection was frivolous or vexatious, the committee is required to report this to the house, "together with their opinion on the other matters relating to the said petition;" and then the opposite party is entitled, irrespective of the opinion of the committee, or any other matter, to recover from the party on whose behalf such frivolous or vexatious objection was made, the costs incurred by reason of such objection. In the instance last enumerated, where either party makes a specific allegation with respect to the conduct of the other party or his agents, and the committee is of opinion that such allegation was made without any reasonable or probable ground, no report to the house is made necessary by the statute, but it enacts, "that it shall be lawful for the committee to make such orders as to them shall seem fit, for the payment, by the party making such unfounded allegation to the other party, of all costs and expenses which shall have been incurred by reason of such unfounded allegation. (Sec. 92.)

The mode of ascertaining the costs, arising upon the report or order of a select committee, and the expenses payable to any witness summoned before a committee, is also specified in the statute, and is as follows:—"Upon application to the Speaker, not later than three months after the determination of the petition, he directs the costs to be taxed by the examiner of recognizances, who reports the amount thereof, with the name of the party liable to pay, and the name of the party entitled to receive the same. The Speaker then signs a certificate, expressing the amount of costs allowed, and the name of the party by whom and to whom the same are to be paid," and the act declares, that "such certificate, so signed by the Speaker, shall be conclusive evidence, as well of the amount of such demands, as of the title of

the several parties to recover the same, in all cases and for all purposes whatsoever." (Sec. 93.)<sup>c</sup>

For the purposes of taxation, the taxing officer is empowered to examine any party claiming costs, and all witnesses tendered to him for examination, upon oath; and also to receive affidavits relative to such costs. The affidavits may be sworn either before the examiner of recognizances or any Master in Chancery, or before a justice of the peace. When the amount of costs has been ascertained and certified in the manner above stated, the 95th section points out how the amount may be recovered. The party entitled to recover, or his executor or administrator, is empowered to demand the amount certified by the Speaker, from any one or more of the persons made liable to the payment thereof; and in case of non-payment, the amount may be recovered by action of debt in any of her Majesty's Courts of Record at Westminster or Dublin, or in the Court of Session in Scotland. In such action it is sufficient for the plaintiff to declare that the defendant, or defendants, is or are indebted to him in the sum mentioned in the certificate, and upon filing the affidavits with the certificate and affidavits of such demand, the plaintiff is declared to be "at liberty to sign judgment as for want of plea by *nil dicit*, and take out execution for the sum mentioned in the certificate, with costs of the action according to the due course of law." This provision is framed in such a manner as to render the intention of the legislature a matter of some doubt. If it be intended to preclude the defendant from pleading, the bringing an action and filing a declaration seems rather an unnecessary form. If the defendant is at liberty to plead and neglects to avail himself of the privilege, it is no boon to the plaintiff that in such a case he may sign judgment for want of a plea. The section concludes with a proviso, that the validity of the certificate, the Speaker's hand-writing being verified, shall not be called in question in

<sup>c</sup> This provision is not affected by the House of Commons Taxation Act, (10 & 11 Vict. c. 66,) passed during the last session, and printed *ante*, p. 337, which relates exclusively to costs charged in respect to private bills, or in complying with the standing orders relative to such private bills, and in preparing, bringing in and carrying the same through, or in opposing the same in the House of Commons.

any court, upon the allegation of any matter anterior to the date thereof; from which we infer it is intended, that the defendant should be at liberty by pleading or otherwise to show that the demand arising upon the certificate has been satisfied, or released, or that any thing has occurred subsequent to the date of the certificate, which would furnish an answer to the action.

When several parties are jointly and severally liable under the Speaker's certificate, and the amount has been recovered from one person, he may recover contribution from the other persons liable in proportion to their number and the extent of the liability of each person.

With respect to the recognizance, which we have seen (*ante*, p. 385) is entered into by and on behalf of the petitioners, before the presentation of the petition, the course of proceeding is specified in the 97th section. It is therein provided, that if any petitioner refuse, for the space of seven days after demand, to pay a witness summoned on his behalf, the sum certified by the Speaker to be due to such witness, or refuse, for the space of six months after demand, to pay any party appearing in opposition to the petition, the sum certified to be due to such party for costs, and such refusal shall be proved to the Speaker's satisfaction by affidavit,<sup>d</sup> within one year after the granting of such certificate, then every person who shall have entered into such recognizance shall be held to have made default, and the Speaker shall certify such recognizance into the Court of Exchequer. The recognizance is then dealt with precisely in the same manner as if it were estreated from a court of law.

It is scarcely necessary, perhaps, to add in conclusion, that in the numerous instances in which select committees do not feel called upon to report, either that the petition appears to them to be frivolous or vexatious, or that the opposition to the petition appeared to be frivolous or vexatious, the result is, that neither party is entitled to call upon the other for costs; or, in other words, both parties bear the expenses they have respectively incurred in the course of the inquiry before the committee.

<sup>d</sup> The affidavit or affidavits used to satisfy the Speaker, should be sworn before a Master in Chancery, who is required to certify the same, 7 & 8 Vict. c. 103, s. 97.

## CITY OF LONDON SMALL DEBTS ACT.

THIS act (10 & 11 Vict. c. lxxi.) will come into operation on the 29th instant. In our next number we shall submit it to our readers. In the mean time it may be satisfactory to state, that by the 75th sec. the judge is empowered to settle and regulate the fees to be taken by barristers-at-law and attorneys practising in the court, and to direct in what cases the expenses of employing them shall be allowed on taxation of costs.

It will be recollected, that by the General County Courts Act (9 & 10 Vict. c. 95, s. 91), the attorneys' fees are limited to 10s. where the debt is not more than 5*l.*, and 15s. above that sum, and the barristers' fee to 1*l.* 3s. 6*d.*

A similar power should be given to the judges regarding the County Courts generally as is now given to the City of London.

### NOTICES OF NEW BOOKS.

*A Practical Treatise on the Law of Partnership; including the Law relating to Joint-Stock Companies; with an Appendix of Precedents, Forms, and Statutes.* By ANDREW BISSET, Esq., of Lincoln's Inn, Barrister-at-Law. London: Stevens and Norton, and Benning and Co. 1847. Pp. 635.

IN commercial and trading matters it is a general, if not an universal, rule, that the public is benefited by competition. The spirit of rivalry may, however, be carried too far. The monopolist may charge the community too much;—railway kings may be too arbitrary; but on the other hand, numerous competitors in the race of cheapness may force an unnatural demand which cannot endure long, and whilst they ultimately ruin themselves, may inflict serious injury on all connected with them, and to a certain extent, on the public in general. The *juste milieu* is rarely preserved.

As in commerce and handicraftmanship, so in literary and legal authorship, the labourers in the field are generally too numerous. If an unexplored region be discovered by some fortunate adventurer, whose skill and diligence might reap an abundant harvest, a host of rivals rush in to divide the empire. According to a

delicate comparison between the number of counsel and the number of chancery suits, there are "more pigs than teats."

In almost every department of legal study there are several treatises, each succeeding writer laying claim to some peculiar merit, and not always acknowledging the aid he has received from his predecessors. We would not, indeed have it understood that any one is entitled to monopolize a particular subject; but we think a new treatise on precisely the same topic can only be justified by some essential defects in the existing work, or some striking improvements in the method of treatment, accompanied by new and important materials. In this age of new statutes and new decisions on the construction of them, the legal writer has, however, a very plausible excuse for introducing a new book wherever those statutes and decisions have effected any material alterations in the law.

Amongst the various subjects which have engaged the attention of our learned friends in the walks of legal literature, that of the Law of Partnership was likely to hold a prominent place. The multitude of joint-stock companies within the last twenty years, and lastly, the numerous railway companies, have largely increased the importance of this department of the law.

Mr. Bisset, the present author, conceives, that notwithstanding the number of treatises already published on the Law of Partnership, it is unnecessary to offer any apology for the appearance of another work on that subject at the present time. Besides containing the more recent cases as well as statutes, one or two points will, he hopes, be found to have received in his pages further elucidation than they have before had. He mentions in particular that he has been enabled to state the result of the cases as to the conversion of real estate belonging to a partnership, more accurately than had before been done, in consequence of having been furnished by his friend Mr. Williamson, one of the counsel in the cause, with his manuscript note of the points decided in the case of *Phillips v. Phillips*, 1 M. & K. 649.

In the first part of his work Mr. Bisset treats of the Law of Ordinary Partnership, under the following heads :—

1. What constitutes partnership.
2. Interest of partners in partnership property.

3. Powers of one partner to bind the firm, and consequent liabilities of his co-partners.
4. Causes of the dissolution of partnership.
5. Consequences of the dissolution.
6. Legal remedies between, by, and against partners.
7. Equitable remedies between, by, and against partners.
8. Deeds of partnership and their construction.

In Part 2, the author considers the Law of *Joint Stock Companies*, which he arranges thus :—

1. Joint-stock companies before the 7 & 8 Vict. c. 110.
2. Joint-stock companies within the 7 & 8 Vict. c. 110, not requiring the authority of parliament.
3. Railway and other joint-stock companies, requiring the authority of parliament, within the 7 & 8 Vict. c. 110, for some purposes, but not for others.
4. Banking companies.
5. Dissolution of joint-stock companies.
6. What constitutes partnership in these companies.
7. Legal remedies affecting joint-stock companies, their individual members, and strangers.
8. Suits in equity between joint-stock companies and strangers.
9. Suits in equity among the shareholders of joint-stock companies.

Mr. Bisset states that he is indebted for the chapter on "Legal Remedies between, by, and against Partners, in the first part of the work, and that on "Legal Remedies affecting Joint-Stock Companies, their Individual Members, and Strangers," in the second part, to his friend Mr. John Dekewer Frampton, of Lincoln's Inn; and he observes, that

"In the recent cases of *Reynell v. Lewis*, and *Wyll v. Hopkins*, 10 Jurist, 972,\* in the Court of Exchequer, the opinions of the court have further confirmed the conclusion stated in this work, that there is no partnership or quasi-partnership before complete registration or incorporation; but these opinions appear to narrow the liability of the members of a provisional committee to those cases 'where there is evidence that the defendant has not only consented to be a provisional committee-man, but has authorised his name to be inserted in a prospectus, not generally, but a particular prospectus, in which in some cases certain persons are described as the acting committee, in others solicitors are named, or engineers, or a secretary.' The inference to be drawn must depend upon the terms of each particular prospectus. In such cases it must be shown that the contract sued on was made by the defendant, either personally, or by an agent duly con-

\* And see 33 L. O. 115.

stituted for the purpose of making it; and the jury in determining this question, are, with due assistance from the judge, to apply the legal principles affecting the relation of principal and agent."

We have thus stated Mr. Bisset's claims to the attention of the profession. We cannot undertake to institute a minute comparison between his labours and those of previous text writers, either on the general subject of partnership, or the particular one of joint-stock companies. The present author has brought down the statutes and decisions to the time of publication, and herein consists the merit of most of our modern treatises.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### ADMINISTRATION OF POOR LAWS.

10 & 11 VICT. c. 109.

An Act for the Administration of the Laws for Relief of the Poor in England. [23rd July, 1847.]

1. 4 & 5 W. 4, c. 76.—*Appointment of commissioners.*—Whereas an act was passed in the 4 & 5 W. 4, intituled, "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales;" and divers acts have since been passed for the amendment of the said act, or otherwise relating to the laws for the relief of the poor in England: And whereas the administration of the laws for the relief of the poor in England is subject to the direction and control of the Poor Law Commissioners, whose commission will expire at the end of the session of parliament next after the 31st day of July, in this year, and it is expedient to make further provision for the administration of the said laws: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That it shall be lawful for her Majesty, by any letters patent, or by any commission or commissions to be issued under the Great Seal of Great Britain, from time to time to nominate, constitute, and appoint, during pleasure, such person or persons as her Majesty shall think fit to be, and who shall accordingly be and be styled, "Commissioners for administering the Laws for Relief of the Poor in England;" and whenever in this act the word commissioners shall be used without addition it shall be taken to mean the said commissioners for administering the laws for relief of the poor in England.

2. *Commissioners ex officio.*—And be it enacted, That the Lord President of the Council, the Lord Privy Seal, her Majesty's Principal Secretary of State for the Home Department, and the Chancellor of the Exchequer for the

time being shall be, by virtue of their respective offices, commissioners for administering the laws for relief of the poor in England, with the person or persons nominated in any such letters patent or commission as aforesaid, and shall have the same powers as if they were expressly nominated in such commission.

3. *When commissioners shall enter on their office.*—And be it enacted, that notice of the issue of every such commission shall be published in the *London Gazette*; and the commissioners first appointed under this act shall enter on their office, and all the powers by this act vested in them shall take effect, on the day after the first publication of such notice in the *London Gazette*.

4. *Who shall preside at meetings of the commissioners.*—And be it enacted, That the commissioner first named in any such letters patent of commission for the time being shall be and be styled the "President;" and whenever in the absence of the president two or more of the commissioners shall meet for the execution of any powers vested in them by this act, the commissioner next in order of nomination in the said commission or this act, of those who shall be present, shall for the turn preside; and if the commissioners present at any meeting shall be equally divided in opinion upon any question before them, the president, or in his absence the commissioner presiding at that meeting, shall have a second or casting vote.

5. *Seal of the commissioners.*—And be it enacted, That the commissioners shall cause a seal to be made for their use, and such seal shall have the same force and effect as the seal of the Poor Law Commissioners now has in England, and documents purporting to be sealed or stamped therewith shall be received in evidence in like manner and with the like effect as documents sealed or stamped with the seal of the Poor Law Commissioners are now received in evidence.

6. *Appointment of secretaries, clerks, &c.*—And be it enacted, That the commissioners shall from time to time, by order under their seal, appoint two secretaries, and may, by a like order under their seal, remove any secretary so appointed, and shall also from time to time appoint so many clerks, messengers, and servants as shall be allowed by the Lord High Treasurer or the Commissioners of her Majesty's Treasury; and all the persons so appointed shall hold their offices during the pleasure of the commissioners.

7. *Who are competent to act in execution of act.*—And be it enacted, That any two of the said commissioners, or the said president alone, except as hereinafter provided, shall be competent to act in the execution of any powers vested in the commissioners by this act; provided that no act of the commissioners which is required to be under their seal, or which, if done by the Poor Law Commissioners, must have been done under their hands and seal, shall be of any validity unless it shall purport to be signed by at least two of the commissioners, or by the president, and if signed by

the president alone, countersigned by one of the secretaries to the commissioners; and during any vacancy among the commissioners, the surviving or continuing commissioners or commissioner may continue to act with the same powers and in the same manner respectively as before such vacancy.

8. *Salaries.*—And be it enacted, That there shall be paid to the president and to the said secretaries, clerks, messengers, and servants, such salaries as shall be from time to time regulated by the Lord High Treasurer or the Commissioners of her Majesty's Treasury, but no commissioner, other than the said president, shall be entitled to have any salary or remuneration for acting in the execution of this act.

9. *President and one secretary may sit in the House of Commons.*—And be it enacted, That the office of president shall not be deemed such an office as shall render the person holding such office incapable of being elected, or of sitting or voting as a member of the Commons House of Parliament, or as shall avoid his election if returned, or render him liable to any penalty for sitting or voting in parliament; and that one only of the said secretaries shall at the same time be capable of sitting and voting in the Commons House of Parliament.

10. *Transfer of powers and duties of the Poor Law Commissioners.*—And be it enacted, That on the day on which the commissioners first appointed under this act shall enter on their office, all the powers and duties of the Poor Law Commissioners with respect to the administration or control of the administration of relief to the poor throughout England, and all other powers and duties now vested in them, shall be transferred to and vested in the commissioners, and shall be thenceforth exercised by them, and by the commissioners appointed from time to time in and by any new commission or letters patent under the provisions of this act, and all provisions in any act relating to the administration of relief to the poor in England, or to the powers or duties of the Poor Law Commissioners, shall be construed as if in the said several acts the commissioners had been named instead of the Poor Law Commissioners, subject, nevertheless, to any amendments made by this act, either as to the substance or manner of exercising any of the powers of the said Poor Law Commissioners; and at the same time all powers and authorities vested by any act in the Poor Law Commissioners appointed under the first-recited act, or any act passed for the amendment thereof, shall cease, and all secretaries, assistant secretaries, clerks, messengers, and officers appointed and employed by the said Poor Law Commissioners in the business of their office shall cease to hold their several offices and employments.

11. *Power to summon witnesses.*—And be it enacted, that the commissioners, by summons under their seal, may require the attendance of all persons upon any matter connected with the execution of any of the powers by law vested in them at such time and place as shall

be set forth in the summons, and may make inquiry and require returns, and require and enforce the production upon oath of books, contracts, agreements, accounts, maps, plans, surveys, valuations, and writings, or copies thereof respectively, in anywise relating to any such matter, and the commissioners, or any one of them, may upon such matters administer oaths, and examine upon oath all persons so brought before them or him, and, when they or he shall think fit, instead of requiring such oath as aforesaid, may require any such person to make and subscribe a declaration of the truth of the matters respecting which he shall have been or shall be so examined: Provided always, that no person shall be required, in obedience to any such order, to go more than 10 miles from the place of his abode: Provided also, that nothing herein contained shall empower the commissioners to require the production of the title, or of any paper or deed relating to the title of any lands, tenements, or hereditaments, not being the property of any parish or union.

12. *Repeal of certain enactments as to the records of the commissioners* 5 & 6 Vict. c. 57. —And be it enacted, that so much of the said act of the 5 W. 4, or of any act passed in the 6 Vict., intituled "An Act to continue until the 31st day of July, 1847, and to the end of the then next Session of Parliament, the Poor Law Commission, and for the further Amendment of the Laws relating to the Poor in England," or of any other act as would require any minute of the opinion of each of the commissioners to be made in the record of their proceedings in cases of final difference of opinion upon any order or proceeding, or as would require any record or general report of the proceedings of the commissioners to be submitted to one of her Majesty's Principal Secretaries of State, shall be repealed.

13. *Annual Report to her Majesty to be laid before parliament.*—And be it enacted, That the commissioners shall once in every year submit to her Majesty a general report of their proceedings, and every such general report shall be laid before both houses of parliament within six weeks after the date thereof if parliament be then sitting, or if parliament be not then sitting, within six weeks after the next meeting of parliament.

14. *How rules are to be made.*—And be it enacted, That from and after the day on which the commissioners first appointed under this act shall enter on their office the power vested in the Poor Law Commissioners to make rules, orders, and regulations, and from time to time to vary or rescind the same, shall be vested in the commissioners constituted under this act, to be exercised by them in the manner herein-after specified, and the commissioners shall make all such rules, orders, and regulations under their seal, except such as are intended only for their own guidance or procedure; or for the guidance or procedure of any persons appointed or employed by them for the business of their office, and shall make all general rules



under their seal, and under the hands of three or more of the commissioners, of whom the president shall be one.

15. *Definition of general rules.*—And be it enacted, That every rule, order, or regulation of the commissioners which at the time of issuing the same shall be directed to and affect more than one union, shall be deemed a general rule, and every rule, order, and regulation made to vary or rescind a general rule, whether it be directed to or affect one or more than one union, shall also be deemed a general rule.

16. *Repeal of part of 4 & 5 W. 4, c. 76, as to making general rules.*—And be it enacted, That from and after the day on which the commissioners first appointed under this act shall enter on their office so much of the said act of the 4 & 5 W. 4, as relates to the making of general rules by the Poor Law Commissioners, or to the time or manner when or how any such general rule shall operate or take effect, or to the disallowance of any such general rule, or any part thereof, shall be repealed.

17. *Disallowance of general rules by the Queen in council.*—And be it enacted, That if her Majesty shall be pleased at any time, by the advice of her Privy Council, to disallow any such general rule, or any part thereof, the same, so far as it shall have been so disallowed, shall cease to be of any force or validity, except as to all things lawfully done under the before such disallowance, which shall be and continue to be valid.

18. *Confirmation of existing rules.*—Provided always, and be it declared and enacted, That all lawful rules, orders, and regulations of the Poor Law Commissioners made before the day on which the commissioners first appointed under this act shall enter on their office shall continue in full force and effect until rescinded or varied under the authority of this act.

19. *Appointment of inspectors.*—And be it enacted, That the commissioners shall from time to time, by order under their seal, appoint so many fit persons as shall be allowed by the Lord High Treasurer or Commissioners of her Majesty's Treasury, to be inspectors, to assist in the execution of this act and of other acts now or which shall be hereafter in force for the relief of the poor in England, and may from time to time assign to the inspectors so appointed, or any of them, such duties in the execution of this act as they may think fit; and the commissioners, by order under their seal, may remove all or any of the said inspectors, and appoint others in their stead; and there shall be paid to every such inspector such salary as shall be from time to time regulated by the Lord High Treasurer or the Commissioners of her Majesty's Treasury.

20. *Duties of inspectors.*—And be it enacted, That the said inspectors, and each of them, shall be entitled to visit and inspect every workhouse or place wherein any poor person in receipt of relief shall be lodged, and to attend every board of guardians and every parochial and other local meeting held for the relief of

the poor, and to take part in the proceedings, but not to vote at such board or meeting.

21. *Inspectors may summon witnesses.*—And be it enacted, That the said inspectors may summon before them such persons as they may think necessary for the purpose of being examined before them upon any matter concerning the administration of the laws relating to the relief of the poor, or any other matter placed by law under the control or regulation of the commissioners, or for the purpose of producing and verifying upon oath any books, contracts, agreements, accounts, writings, or copies of the same, in anywise relating to such matter, and not relating to or involving any question of title to any lands, tenements, or hereditaments not being the property of any parish or union, and may examine any person whom they shall so summon, or who shall voluntarily come before them to be examined upon any such matter upon oath, which each of the said inspectors shall be empowered to administer, or instead of administering an oath, the inspector may require the party examined to make and subscribe a declaration of the truth of the matter respecting which he shall have been or shall be so examined; and all summonses made by any such inspector for any such purpose as aforesaid shall be obeyed by all persons as if such summons had been the summons and order of the commissioners, and the nonobservance thereof shall be punishable in like manner; and that the costs and expenses of such person so summoned shall be paid in such cases and in such manner as the costs and expenses of persons summoned under the authority of the first-recited act are now payable: Provided always, that no person shall be required in obedience to any such summons to go or travel more than ten miles from his place of abode.

22. *Special inquiries.*—And be it enacted, That so much of the said act of the 6 Vict., as relates to the appointment of any assistant commissioner or of any person for the purpose of conducting any special inquiry as an assistant commissioner shall be repealed; and that, whenever it may seem fitting to the commissioners, they, with the consent of the Lord High Treasurer or the Commissioners of her Majesty's Treasury for the time being, may appoint some fit person to act as an inspector for the purpose of conducting any special inquiry for a period not exceeding 30 days, and the said commissioners may delegate to every person so appointed for the purpose of conducting such inquiry all such of the powers of the said commissioners as they may deem necessary or expedient for summoning witnesses and conducting such inquiry.

23. *Persons being married, above 60 years of age, not compelled to live apart in workhouses.*—Provided always, and be it enacted, That when any two persons, being husband and wife, both of whom shall be above the age of 60 years, shall be received into any workhouse, in pursuance of the provisions of the said recited act, or of this act, or of any rule, order,

or regulation of the commissioners appointed by authority of this act, such two persons shall not be compelled to live separate and apart from each other in such workhouse.

24. *For ensuring the due visitation of workhouses.*—And be it enacted, That in all cases where boards of guardians neglect to appoint a visiting committee for the purpose of visiting the workhouse of the union, or when three months shall have elapsed during which such committee shall have neglected to visit such workhouse, the Poor Law Commissioners shall be required to appoint a visitor, not being one of the guardians, at a salary to be fixed by them, to be paid out of the general fund of the union: Provided always, that the appointment of any such paid visitor shall cease at the expiration of three calendar months next after the appointment of any visiting committee by the guardians, subject, nevertheless, to his re-appointment in case of any repetition of such neglect of the guardians or visiting committee as aforesaid.

25. *For confirmation of the proceedings of boards of guardians.*—And be it enacted, That in any civil or criminal proceeding it shall not be necessary to prove the sending of the original order of the Poor Law Commissioners, or of the commissioners constituting any board of guardians, in any case in which any persons professing to form a board in obedience to such order shall have taken upon themselves to act, and shall have continued for three years to act, in the execution of the laws for the relief of the poor; and in no proceeding shall it be lawful to question the qualification or validity of the election of any person as a guardian after the end of twelve months next following the election, or the time when the alleged disqualification or want of qualification of the person against whom such proceeding shall be directed shall have arisen.

26. *Penalties for giving false evidence, or refusing to give evidence.*—And be it declared and enacted, That every person who upon any examination under the authority of this act shall wilfully give false evidence, or wilfully make or subscribe a false declaration, shall, on being convicted thereof, suffer the pains and penalties of perjury; and every person who shall refuse or wilfully neglect to attend in obedience to any summons of the commissioners, or any inspector, or to give evidence, or who shall wilfully alter, suppress, conceal, destroy, or refuse to produce any books, contracts, agreements, accounts, maps, plans, surveys, valuations, or writings, or copies of the same, which may be required to be produced for the purposes of this act, to any person authorized by this act to require the production thereof, shall be deemed guilty of a misdemeanor.

27. *Confirmation of proceedings under recited acts.*—And be it enacted, That, save when varied or repealed by this act, and subject to the provisions herein contained, all the powers and provisions of the recited acts and of all other acts relating to the relief of the poor in

England, and everything lawfully done under the same, or in pursuance thereof, and all lawful acts and proceedings of the Poor Law Commissioners, and their assistant commissioners, and any officers acting under them, or in virtue of the said acts, or any of them, or under their authority, or by any other person acting in the administration of the laws for the relief of the poor in England, on or before the day when the commissioners first appointed under this act shall enter on their office, shall be as valid as if this act had not been passed; and every suit or other proceeding, civil or criminal, begun before the last-mentioned day, in the name and under the authority of the Poor Law Commissioners, shall have the same force and effect, if continued in their names under the sanction of the commissioners, as if the Poor Law Commissioners had continued to act in execution of the said acts of parliament; and nothing herein contained shall in any way take away or interfere with any right of action or of defence to the same, or any liability to be sued or prosecuted for any penalty, for or against any person under the said acts, or any of them, according to the respective provisions thereof, which shall have accrued wholly or in part before the last-mentioned day.

28. *Commission to continue for five years.*—Provided always, and be it enacted, That no commissioner constituted under this act, nor any inspector, secretary, or other officer or person to be appointed and employed by the commissioners in the business of their office under this act, shall continue to hold his respective office under this act, or exercise any of the powers given by this act, for a longer period than five years next after the day of the passing of this act, and thenceforth until the end of the then next session of parliament; and from and after the expiration of the said period of five years, and of the then next session of parliament, so much of this act as enables her Majesty to appoint any commissioner shall cease to operate or to have any effect whatever.

29. *Interpretation of act.*—And be it enacted, That this act shall be construed in the same manner as the said act of the 5 W. 4, and the said act of the 6 Vict., and the several acts passed for the amendment of the said acts or either of them, and as one act with the same, and with the acts and provisions thereby directed to be construed as one act, unless where otherwise directed by this act.

34. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in this session of parliament.

#### COLONIAL COPYRIGHT.

10 & 11 VICT. c. 95.

An Act to amend the Law relating to the Protection in the Colonies of Works entitled to Copyright in the United Kingdom. [22nd July, 1847.]

1. 5 & 6 Vict. c. 45.—8 & 9 Vict. c. 93.—

*Her Majesty may suspend in certain cases the prohibitions against the admission of pirated books into the colonies in certain cases.*—Whereas by an act passed in the session of parliament holden in the 5 & 6 Vict., intituled “An Act to amend the Law of Copyright,” it is amongst other things enacted, that it shall not be lawful for any person not being the proprietor of the copyright, or some person authorized by him, to import into any part of the United Kingdom, or into any other part of the British dominions, for sale or hire, any printed book first composed or written or printed or published in any part of the United Kingdom wherein there shall be copyright, and reprinted in any country or place whatsoever out of the British dominions: And whereas by an act passed in the session of parliament holden in the 8 & 9 Vict., intituled “An Act to regulate the Trade of the British Possessions abroad,” books wherein the copyright is subsisting, first composed or written or printed in the United Kingdom, and printed or reprinted in any other country, are absolutely prohibited to be imported into the British possessions abroad: And whereas by the said last-recited act it is enacted, that all laws, byelaws, usages, or customs in practice, or endeavoured or pretended to be in force or practice in any of the British possessions in America, which are in anywise repugnant to the said act or to any act of parliament made or to be made in the United Kingdom, so far as such act shall relate to and mention the said possessions, are and shall be null and void to all intents and purposes whatsoever: Now, be it enacted, by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That in case the legislature or proper legislative authorities in any British possession shall be disposed to make due provision for securing or protecting the rights of British authors in such possession, and shall pass an act or make an ordinance for that purpose, and shall transmit the same in the proper manner to the Secretary of State, in order that it may be submitted to her Majesty, and in case her Majesty shall be of opinion that such act or ordinance is sufficient for the purpose of securing to British authors reasonable protection within such possession, it shall be lawful for her Majesty, if she think fit so to do, to express her royal approval of such act or ordinance, and thereupon to issue an order in council declaring that so long as the provisions of such act or ordinance continue in force within such colony the prohibitions contained in the aforesaid acts, and herein-before recited, and any prohibitions contained in the said acts or in any other acts against the importing, selling, letting out to hire, exposing for sale or hire, or possessing foreign reprints of books first composed, written, printed, or published in the United Kingdom, and entitled to copyright therein, shall be suspended so far as regards such colony; and thereupon such act or

ordinance shall come into operation, except so far as may be otherwise provided therein, or as may be otherwise directed by such order in council, anything in the said last recited act or in any other act to the contrary notwithstanding.

2. *Orders in council to be published in Gazette.*—*Orders in council and the colonial acts or ordinances to be laid before parliament.*—And be it enacted, That every such order in council shall, within one week after the issuing thereof, be published in the *London Gazette*, and that a copy thereof, and of every such colonial act or ordinance so approved as aforesaid by her Majesty, shall be laid before both houses of parliament within six weeks after the issuing of such order, if parliament be then sitting, or if parliament be not then sitting, then within six weeks after the opening of the next session of parliament.

3. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in this session of parliament.

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

FROM some communications we have received, we deem it necessary to repeat, that the principle (as we understand it) on which this association is mainly founded is that of a *general union of town and country solicitors*. The Town is already numerously represented by the Incorporated Law Society. The Country, in many parts of it at least, is also well represented by its various Local Societies. They each act in their several vicinities with various degrees of activity and usefulness.

The avowed purpose of the founders of the new association is to combine the influence now scattered over the country into one focus, in order that the profession may regain and uphold its social and legal position in the community.

Towards this end, the public mind must be disabused of the prejudice against the general body, which the misconduct or the ignorance of some of its members has occasioned; and the legislature must be made acquainted with the justice of the claims of the attorneys and solicitors to participate in the honours which belong to the profession.

In order effectually to carry out the purposes of the association, it is necessary that the practitioners throughout the kingdom should immediately enrol their names as members. The present is the most favourable juncture for the success of the undertaking. A meeting will take place next month, at which the result of

the address of the committee will be considered, and a large return of names from *all parts* of the country will, no doubt, have an important influence on the future measures which the committee may deem it expedient to adopt.

Again, therefore, we recommend every attorney and solicitor to communicate his determination to the Committee, who are zealously engaged in the establishment of the association.

## PROPOSED ALTERATIONS IN THE LAW OF MARRIAGE.

### REASONS FOR REPEALING THE 5 & 6 W. 4, c. 54.

AMONG the reasons for repealing the act of 1835 (5 & 6 W. 4, c. 54), which prohibits marriage with a deceased wife's sister, the following have been suggested:—

"1st, That any restraints upon so sacred an institution as marriage can be justified only by the express command of scripture, or the imperative calls of social expediency; neither of which can with any shadow of reason be pleaded as a ground for prohibiting the marriage in question.

"2ndly, That there is no *consanguinity*, or blood relationship, between the parties, and therefore no *physical* ground for the prohibition.

"3rdly, That the deceased wife's sister is almost invariably the fittest person to take charge of the motherless children, who, under her care, are rarely exposed to the proverbial harshness and injustice of a stepmother.

"4thly, That there is no kind of marriage which affords a better chance of domestic happiness, inasmuch as there is none in which the parties are likely to have had so many opportunities of becoming acquainted with the temper, feelings, and habits of each other.

5thly, That the experience of the last twelve years abundantly proves the inefficiency of a mere conventional prohibition to prevent these marriages.

"6thly, That the existing law, while it is violated by numerous individuals in all classes of society, is producing, among the lower classes, extensive demoralization; the effect being to enable persons to go through the ceremony of marriage, and to deny its legality when it suits their purpose. Several hundreds of the parochial clergy, and large bodies of the laity, have already, *in their petitions to parliament*, borne testimony to the truth of this statement.

"7thly, That the legal force of the prohibition, as applicable to marriages of this kind solemnized abroad, admits of serious doubts amongst our most experienced lawyers;—some considering that it works a personal disqualification between the parties, which neither time, nor place, nor circumstance, can remove; while others, of equally high authority, are of opinion that domicile in any of the numerous countries where such marriages are lawful, will remedy

the defect; and others, again conceive that the mere celebration of the marriage in such a country is sufficient;—and the consequence of these doubts has been, especially among the middle class, to make these marriages very frequent, the inevitable result of such state of things must be (as has been truly stated in the petitions presented to parliament from almost all the most eminent solicitors in the kingdom), that, ere long, the legitimacy of the innocent offspring of such marriages will be, called in question, their titles disputed, and their lives embittered by *family litigation*.

"8thly, That there is no rational ground for objection, that the *power to contract a valid marriage* with a deceased wife's sister would encourage immorality between the husband and the wife's sister during the wife's life, since the universal abhorrence with which adultery of this description is regarded has been found to operate in *every country* as a sufficient prevention of the crime; and it is absurd to suppose that any man who could deliberately, during the life-time of his wife, contemplate the seduction of her sister, would be deterred from his purpose by an act of parliament which prohibits *marriage* with her after the wife's death, but subjects him to no punishment for *seducing* her during the wife's lifetime.

"9thly, That the only other plausible objection which has been urged against legalizing marriage between a widower and his deceased wife's sister, viz. the supposed scandal which would arise from her keeping his house and taking charge of his family, is equally untenable; since it would rather be inferred by all reasonable persons, that, if the parties were free to marry, and wished to cohabit, *they would marry*,—and that, not marrying, *they could have no desire to cohabit*.

"10thly, That, while one clause of the act of 5 & 6 Vict. c. 54, *expressly confirmed* all marriages of this description celebrated *before* a given day, another clause (introduced after the bill was presented to parliament) *makes void* marriages solemnized *after* that day, thus, to a great extent, defeating the purpose of the noble lord who framed the bill, by casting a *moral slur* upon those very marriages to which a preceding clause had given a *legal sanction*.

"Lastly, That marriage in this case is permitted, either with or without dispensation, in almost every other Protestant as well as Roman Catholic country, without producing any ill effects, or diminishing the freedom of domestic intercourse; and, therefore, the continued existence of the restrictions upon these marriages in our own Statute Book, is a *standing reproach* upon the English nation, proclaiming to the whole world, that, in the opinion of the legislature, the people of this country are less under the control of religious and moral principle than those of any other christian country, and need restraints upon their conduct which are found to be unnecessary elsewhere."

## INTERNATIONAL COPYRIGHT.

ACCORDING to an order in council, published in the *Gazette* of 31st August, it is ordered, that the authors, inventors, designers, &c., of any books, prints, sculptures, dramatic works, musical compositions, and other works of literature and the fine arts (in which the laws of Great Britain give any privilege of copyright to British subjects) first published within the dominions of the states forming the Thuringian Union, shall, after the 15th day of July last, have a privilege of copyright therein, in the same manner and for the same period as is enjoyed by British subjects, throughout Great Britain, subject to the same proviso as to registration.

The same *Gazette* also contains an order in council, dated the 10th of August, 1847, by which the duty on books originally produced in the United Kingdom and republished at any place within the dominions of the said states is declared to be 2*l.* 10*s.* per cwt., and on books published or republished at any place within the states, not being books originally produced in the United Kingdom, 15*s.* per cwt. On prints or drawings, plain or coloured, published within the said states, single, each one half-penny; bound or sewn, the dozen, three half-pence duty.

## LOCAL AND PERSONAL ACTS,

DECLARED PUBLIC,

AND TO BE JUDICIALLY NOTICED.

1. An Act to change the name of the Protestant Dissenters and General Life and Fire Insurance Company to the General Life and Fire Assurance Company, and to extend to the company, by its new name, the powers of the act enabling the company to sue and be sued in the Name of the chairman, deputy chairman, or any one of the directors or of the secretary of the company.

2. An Act for regulating proceedings by or against "Llynvi Iron Company," and for granting certain powers thereto.

3. An Act for the continued repair and maintenance of the road from or near Whiteburn in the county of Berwick to the town of Kelso in the county of Roxburgh; and to authorize the transfer of a portion of the said road to the trustees of the road from Lauder, to and through Kelso, to the Marchburn.

4. An Act for incorporating the District Fire Insurance Company of Birmingham, by the name of "The District Fire Insurance Company;" for enabling the said company to sue and be sued; and for other purposes relating to the said company.

5. An Act for lighting with gas the township of Shipley, the village of Windhill, and the neighbourhood thereof, in the West Riding of the county of York.

6. An Act for extending and enlarging a certain pier in Pile harbour in the parish of Dal-

ton-in-Furness in the county palatine of Lancaster, and to alter the act relating thereto.

7. An Act to alter, amend, and enlarge the powers and provisions of an act passed in the 2nd year of the reign of his late Majesty King George the 4th, intituled "An Act for lighting with gas the town and borough of Ipswich in the county of Suffolk."

8. An Act for authorizing the Cheltenham Waterworks Company to raise a further sum of money.

9. An Act for more effectually maintaining the harbour of Newhaven and the navigation of the river Ouse between Newhaven and Lewes, and for draining the low lands lying in Lewes and Laughton Levels, all in the county of Sussex.

10. An Act for making a railway from Smithstown to Dalmellington in the county of Ayr.

11. An Act to enable the Colchester, Stour Valley, Sudbury, and Halstead Railway Company to make an extension of their railway from Sudbury to Melford, Lavenham, and Clare, in the county of Suffolk.

12. An Act to enable the Newmarket and Chesterford Railway Company to extend their line of railway to Bury Saint Edmunds, with a branch to the city of Ely.

13. An Act for repealing certain provisions of the Newmarket and Chesterford Railway Act, 1846.

14. An Act to amend some of the provisions of the Manchester Markets Act, 1846.

15. An Act to enlarge the powers of "The Wolverhampton Gas Light Company," and to authorise the union of such company with "The Wolverhampton New Gas Company."

16. An Act to enable the Hartlepool West Harbour and Dock Company to construct additional docks; and for repealing an act passed in the 7th year of the reign of her present Majesty, relating to the said Hartlepool West Harbour and Dock Company, and for granting new powers and provisions in lieu thereof.

17. An Act to enable the mayor, aldermen, and burgesses of the borough of Bolton in the county of Lancaster to improve such borough, and to take a lease of and to purchase the works of the Bolton Waterworks Company.

18. An Act to enable the Colchester, Stour Valley, Sudbury, and Halstead Railway Company to make an extension railway from Lavenham to Bury Saint Edmunds in the county of Suffolk.

19. An Act for authorizing the sale of the Eastern Union and Hadleigh Junction Railway to the Eastern Union Railway Company.

20. An Act to enable the Newmarket and Chesterford Railway Company to extend their line of railway to Thetford in the county of Norfolk.

21. An Act to enable the Colchester, Stour Valley, Sudbury, and Halstead Railway Company to grant a lease of their undertaking to the Ipswich and Bury Saint Edmunds Railway Company.

22. An Act to enable the Caledonian Railway Company to make an extension of the Mother-

well branch of the Clydesdale Junction Railway to Auchinheath Mineral Field, with branches therefrom.

23. An Act to enable the Caledonian Railway Company to make branch railways to Wilsontown, to Fauldhouse, and to Biggar and Broughton.

24. An Act to enable the Caledonian Railway Company to make branches from the Clydesdale Junction Railway to the Douglas and Lesmahagow Mineral Fields, and Strathavon.

25. An Act to abolish, reduce, equalize, and consolidate the rates and duties leviable at the harbour and docks of Leith.

26. An Act for better supplying with water the inhabitants of the town and borough of Rochdale, and of several townships and places, all in the parish of Rochdale in the county of Lancaster.

27. An Act for granting further powers to the Bristol and Clifton Oil Gas Company.

28. An Act for better supplying with gas and water the royal burgh of Inverness, suburbs, and places adjacent.

29. An Act for amending the Ryde Improvement Act,

30. An Act for better assessing the poor rates, highway rates, county and police rates, and other parochial and local rates, on small tenements in the several townships of Wolverhampton, Bilston, Willenhall, and Wednesfield, in the county of Stafford.

31. An Act to enable the Shipowners' Towing Company to sue and be sued.

32. An Act to alter and amend an Act, intituled "An Act for providing in or near the burgh of Cupar more extensive Accommodation for holding the Courts and Meetings of the Sheriff, Justices of the Peace, and Commissioners of Supply of the County of Fife; and for the Custody of the Records of the said County;" and to authorize commissioners acting under the authority of that act to provide a court house at Dunfermline for the accommodation of the courts of the sheriff and justices of the peace in the western district of the said county.

33. An Act for better assessing and collecting the poor, church, and highway rates within the parish of Kingston-upon-Thames in the county of Surrey.

34. An Act to enable the Scottish Union Insurance Company to purchase annuities and invest money on securities in England and Ireland; and for other purposes relating thereto.

35. An Act for incorporating the Scottish Equitable Life Assurance Society, for confirming the rules and regulations thereof, for enabling the said society to sue and be sued, to take and to hold property; and for other purposes relating thereto.

36. An Act for regulating legal proceedings by or against "Claridge's Patent Asphalt Company," and for granting certain powers thereto.

37. An Act to enable the mayor and commonalty and citizens of the city of London to

raise a sum of money for paying off the monies now charged on the Bridge House Estates by authority of parliament, and to raise further monies upon the credit of the said estates, and of their own estates and revenues, for effecting public works and improvements in and near the said city.

38. An Act for enabling the Metropolitan Sewage Manure Company to alter the line of their works; and for other purposes.

39. An Act to authorize the purchase by the Aberdeen Railway Company of a piece of ground at the upper part of the Inches and upper part of the harbour of Aberdeen, now vested in the Aberdeen Harbour Commissioners, and to enable such commissioners to make certain alterations and new works connected with such harbour.

40. An Act for better lighting with gas the town of Runcorn, otherwise called Higher Runcorn and Lower Runcorn, and also certain townships and hamlets in the vicinity.

41. An Act for lighting with gas the town and neighbourhood of Bingley in the West Riding of the county of York.

42. An Act for rendering more efficient the Dublin Consumers' Gas Company.

43. An Act for extending the powers of the Imperial Continental Gas Association.

44. An Act to amend and extend the provisions of an Act passed in the third year of the reign of King George the Fourth, intituled "An Act for incorporating the Warrington Gaslight Company."

45. An Act for removing the market between King Street and Castle Street in the town of Sheffield, and for providing a new market place in lieu thereof, and for regulating and maintaining the markets and fairs of the said town.

46. An Act for better and more effectually ascertaining, assessing, collecting and levying the poor rate and all other rates and assessments in the parish of Ewell in the County of Surrey; and for the better management of the business and affairs of the said parish; and for other purposes relating thereto.

47. An Act for repealing the acts relating to the roads leading from the Lower Market House in Tavistock to Old Town Gate in the borough of Plymouth, and from Manadon Gate to the Old Pound, near Devonport, in the county of Devon, and making other provisions in lieu thereof.

48. An Act to enlarge and improve the meal, corn, and grain markets of the city of Edinburgh; and for other purposes in relation thereto.

49. An Act for establishing a market and market place in the town and borough of Wakefield.

50. An Act to repeal the Waterford Road Act.

51. An Act for the better maintenance, improvement, and repair of the Glasgow and Shotts Turnpike Roads.

52. An Act for the amendment of the Port and Harbour Acts of Belfast, for making further improvements and new works there, and

- for the amendment of the Belfast and Cavehill Railway, and Belfast Town Improvement Acts.
53. An Act for incorporating the Commercial Gaslight and Coke Company.
54. An Act for better supplying with water the town and neighbourhood of Over Darwen in the county of Lancaster, and for affording a more regular and constant supply of water to the mill owners and others on the river Darwen.
55. An Act to incorporate a company by the name of "The London Sewage Chemical Manure Company."
56. An Act for amending an Act passed in the 4th year of the reign of his late Majesty King William the 4th, intituled "An Act for granting certain Powers to the British American Land Company," and for granting further powers to the said company.
57. An Act for making a railway from Staines to join the London and South-western railway near Farnborough, with a branch to Chertsey.
58. An Act for making a railway from Richmond to Windsor, with a loop line through Brentford and Hounslow.
59. An Act to authorize an extension of the Cork, Blackrock, and Passage Railway to Monkstown and to amend an act relating thereto.
60. An Act to authorize certain alterations of the line of the Wilts, Somerset, and Weymouth Railway.
61. An Act to authorize certain alterations of the line of the Waterford, Wexford, and Wicklow Railway, and to amend the act relating thereto.
62. An Act to enable the Liskeard and Caradon Railway Company to raise a further sum of money.
63. An Act for making a railway from the town of Killarney in the county of Kerry to the harbour of Valencia in the same county.
64. An Act to empower the Norfolk Railway Company to make a railway from the Lowestoft Railway near Reedham to join the Norwich Extension of the Ipswich and Bury Saint Edmunds Railway near Diss, with a branch therefrom to Halesworth.
65. An Act to alter and amend several of the powers and provisions of the act relating to the Dundalk and Enniskillen Railway.
66. An act for rating to the relief of the poor and other parochial and local rates the owners of certain property within the parishes of King's Norton, Northfield, and Beoley in the county of Worcester, Edgbaston in the county of Warwick, and Harborne in the county of Stafford, in lieu of the occupiers thereof.
67. An Act to repeal two several acts relating to the Liverpool Gas Light Company, and to substitute other provisions in lieu thereof, and to enable the said company to raise a further sum of money.
68. An Act for reducing the dues of the harbour of the borough and town of Weymouth and Melcombe Regis in the county of Dorset, and consolidating the trusts created by the acts relating to such harbour and the bridge of the said borough; and for other purposes.
69. An Act to amend certain acts for making and maintaining roads and converting the statute labour in the counties of Ross and Cromarty, and part of Nairn locally situate in the county of Ross.
70. An Act to explain and amend the laws of sewers relating to the city and liberty of Westminster, and part of Middlesex.
71. An Act for the more easy recovery of small debts and demands within the city of London and the liberties thereof.
72. An Act to authorize an alteration in the line of the Cornwall Railway, and to amend the act relating thereto; and for other purposes.
73. An Act to authorize the Right Hon. Francis Egerton Earl of Ellesmere to sell, and the London and North-western Railway Company to purchase, the estate and interest of the said Earl in the Manchester South Junction and Altrincham Railway.
74. An Act for enabling the Vale of Neath Railway Company to construct certain new lines of railway in connexion with the Vale of Neath Railway; and for other purposes.
75. An Act to enable the General Terminus and Glasgow Harbour Railway Company to make branch railways to the Caledonian and other adjoining railways, and to amend the act relating to such railway.
76. An Act to authorize the Gloucester and Dean Forest Railway Company to construct a dock or basin at Gloucester in connexion with the said railway.
77. An Act for the better supplying the town of Dunfermline and places adjacent therewith with water.
78. An Act to enable the Ambergate, Nottingham, and Boston and Eastern Junction Railway Company to alter the line of their railway, and to construct a branch railway therefrom into the town of Nottingham.
79. An Act to enable the Llynvi Valley Railway Company to make an extension of their railway to Newcastle in the county of Glamorgan, and to amend the act relating to their said railway, to be called "The Llynvi Valley Railway Extension."
80. An Act to enable the Shrewsbury and Birmingham Railway Company to make branch railways to Madeley and Ironbridge; and for other purposes.
81. An Act to enable the Bristol and South Wales Junction Railway Company to improve and maintain the Aust or Old Passage Ferry across the river Severn.
82. An Act to enable the Caledonian Railway Company, to make a branch railway from the Glasgow, Garnkirk, and Coatbridge Railway to Glasgow and to enlarge the station at that city.
83. An Act to enable the Caledonian and Dumbartonshire Junction Railway Company to make certain deviations and branches.
84. An Act to repeal an act of the 2nd year of his late Majesty King William the 4th, intituled "An Act to enable the British Commercial Insurance Company to sue and be sued



in the name of one of the directors or of the secretary for the time being of the company, and to enable the said company to sue and be sued in the name of one of their directors or of their secretary for the time being.

85. An Act to alter and amend the Newry and Enniskillen Railway Act, 1845.

86. An Act for amending the Newport, Abergavenny, and Hereford Railway Act, 1846, and to authorize deviations from the line of the said railway, and for making branches and extensions therefrom.

87. An Act for making a railway from Herne Bay to a junction with the Canterbury and Whitstable Railway, to be called "The Herne Bay and Canterbury Junction Railway."

88. An Act to enable the London and South-western Railway Company to widen and improve the London and South-western Railway from the junction thereof with the Richmond Railway to the terminus at Nine Elms, and to enable them to enlarge their intended station at the York Road, Lambeth.

89. An Act to enable the Dundee and Perth Railway Company to alter and extend their line near to Perth, and to make branches therefrom to Inchture, Polgarvie, and Inchmichael.

90. An Act to enable the Glasgow, Barrhead, and Neilston Direct Railway Company to alter a portion of their line; and for other purposes relating thereto.

91. An Act for making branch railways from the Great Western Railway and from Hammer-smith to join the West London Railway, for widening a portion of the West London Railway, and for extending the same so as to join the London and South-western Railway in the parish of Saint Mary Lambeth, in the county of Surrey.

92. An Act to authorize the purchase by the Eastern Counties Railway Company of the Maldon, Witham, and Braintree Railway.

93. An Act to enable the Great Southern and Western Railway Company to make a railway from Portarlinton to Tullamore.

94. An Act to empower the Norfolk Railway Company to make a railway from Wymondham to Diss.

95. An Act to authorize the purchase of the Glasgow Southern Terminal Railway by the Glasgow, Barrhead, and Neilston Direct Railway Company, and to amend the acts relating to the said company.

96. An Act for making an alteration in the line of the Southampton and Dorchester Railway, and branches therefrom to Lymington and Eling; and for other purposes.

97. An Act for making a branch railway from the Southampton and Dorchester Railway at Moreton to Weymouth, and for other purposes.

98. An Act to authorize an alteration in the line of the Lowestoft Railway, and to amend the acts relating to the Lowestoft Railway and Harbour Company.

99. An Act to enable the Norfolk Railway Company to extend their railway to the town of Great Yarmouth; and for other purposes.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Lord Chancellor.

*Re Townsend.* August 4, 1847.

COSTS OF RE-CONVEYING MORTGAGED ESTATE WHERE MORTGAGEE IS LUNATIC.

*The costs of obtaining an order under 11 Geo. 4, and 1 W. 4, c. 60, for committee of a lunatic mortgagee to re-convey the mortgaged property, must be paid out of the lunatic's estate.*

Mr. Crawford presented a petition for an order under 11 Geo. 4, and 1 W. 4, c. 60, that the committee of the mortgagee, who had become lunatic, might re-convey the mortgaged estate to the mortgagor, on payment by the latter of the principal, interest, and costs, except the costs of obtaining the above order. He cited the cases of *Ex parte Richards in the matter of Lewis*, 1 Jac. & Walker, 264, and *In re Baker*, decided by Lord Lyndhurst, June 20, 1827, as quoted in Shelford on Lunacy, p. 278, (2nd edit.)

Mr. Bacon, contra, referred to the case of *In the matter of Marrow*, 1 Cr. & Phil. 142.

The Lord Chancellor said, that although the reasoning was not very satisfactory, he thought the two cases mentioned by the petitioner had settled the practice, and that the expenses of obtaining the order must come out of the lunatic's estate.

### Rolls Court.

*Newton v. Ricketts.* July 28 & 29.

INJUNCTION.—SUIT TO RECALL PROBATE.

*After probate has been granted, the court will not interfere to restrain parties who, if the probate stands, would be entitled to dispose of the funds in respect of which it has been granted, from dealing with those funds, merely because a suit has been instituted to recall the probate. It is necessary to show a probability of danger to the fund.*

THIS was a motion for a receiver of the personal estate of the late Sir R. Ricketts, and an injunction against the transfer of a sum of 60,000*l.* consols, which formed part of it, pending a suit in the Ecclesiastical Court for the recall of the probate. Sir R. Ricketts died on the 8th of August, 1842, and probate was granted shortly after. The proceedings to procure the revocation of the probate had reached the stage at which the probate is formally called in, on the 30th of May. The 60,000*l.* stock had been transferred by the executors into the names of two trustees named by the testator, one of whom, who was also an executor, had become the survivor, and the transfer which it was sought to restrain, was stated to be merely consequential upon the appointment of a second trustee. The nature of the trusts

did not appear. The motion, so far as it asked for a receiver generally, was not pressed.

Mr. Kindersley and Mr. Barber, for the motion, cited *Atkinson v. Henshaw*, 2 Ves. & Bea. 85; *Ball v. Oliver*, 2 Ves. & Bea. 96; *Rutherford v. Douglas*, 1 Sim. & Stu. 111; *Watkins v. Brent*, 1 M. & C. 97; and *Rendall v. Rendall*, 1 Hare, 152, to show generally the readiness of the court to protect property pending a litigation in the Ecclesiastical Court to ascertain the parties legally entitled to dispose of it; and relied upon the length of time since the death of Sir R. Ricketts as a proof that there could be no necessity for making the proposed transfer.

Mr. Robson, for Lady Ricketts, one of the executors, contended that there must be proof of a *bond fide* intention on the part of the party instituting the suit in the Ecclesiastical Court to prosecute it before a court of equity would interfere, while in this case that proof was wanting.

Mr. Roupell and Mr. Hall, for Mr. Stratford, in whose name the stock was standing. A recent case of *Connor v. Connor*, (See 34 L. O. 420.) before Lord Cottenham, was also mentioned, where there was a suit in the Ecclesiastical Court for the recall of letters of administration, in which the Lord Chancellor was said to have put the parties on terms of bringing the fund into court.

Lord Langdale said, that unless that which had been done by the Lord Chancellor in *Connor v. Connor* should lead him to a different conclusion, it was his opinion that he ought not to interfere after probate had been granted, unless some circumstance could be shown to lead him to apprehend that the fund was in danger. Now, it was not pretended that if the fund was dealt with in the mode directed by the will of the testator, it would be in any danger. The plaintiff was in this position: he might possibly establish his claim; if he did so, it was possible that the conduct of the trustees might make it more difficult for him to enforce it; but if it was not shown that there was a prospect of danger to the fund, why should he interfere with the parties who at present were legally entitled to deal with it? His Lordship subsequently stated that he had inquired into the case of *Connor v. Connor*, and that he found that what was there done was not in any way inconsistent with the opinion he had expressed, and he should therefore refuse to interfere.

The plaintiff appealed to the Lord Chancellor, who affirmed Lord Langdale's decision.

#### Vice-Chancellor of England.

*Ex parte Martin.* July 23, 1847.

RAILWAY COMPANY.—INVESTMENT OF MONEY IN LAND.—CONSTRUCTION OF 8 & 9 VICT. c. 18, s. 80.—COSTS.

*Under the 8 & 9 Vict. c. 18, s. 80, the court is authorized, upon an application for that purpose, in giving the costs attendant upon the investment of money in two distinct pur-*

*chases of land, unless it should be shown that such investment was not a desirable one.*

IN this case, lands had been purchased by a railway company from the trustees of the will of a William Brown, the money had been paid and was to be reinvested in the purchase of other lands on the trusts of the will. The Master had made his report, and had found that it would be desirable that the money should be invested in the purchase of two different pieces of land. The petition prayed that the report might be confirmed, that proper conveyances might be settled, and that the railway company might be ordered to pay the costs attendant on the reinvestment of the money. The words of sec. 80 of the act, after stating that it should be lawful for the court to order the costs of the investment of money in other lands to be paid by the promoters of the undertaking, were—"Provided always, that the costs of one application only for reinvestment in land shall be allowed, unless it shall appear to the Court of Chancery in England or the Court of Exchequer in Ireland, that it is for the benefit of the parties interested in the said monies, that the same should be invested in the purchase of lands in different sums and at different times, in which case it shall be lawful for the court, if it shall think fit, to order the costs of any such investments to be paid by the promoters of the undertaking."

Mr. Osborne appeared for the trustees.

Mr. Heathfield, for the railway company, urged, that the act intended one application for one investment only; here the purchase money was split, and there were two investments, and consequently two different titles to be investigated, the costs of all which would fall upon the company, and there was nothing to show that it would be for the benefit of the parties.

The Vice-Chancellor said, he was of opinion that under the words of the act the court was authorized to give the costs of both purchases, unless it could be shown that the investment was not a desirable one, which had not been done in the present instance.

#### Vice-Chancellor Knight Bruce.

*Munday v. Guyer.* March 18, 1847.

PRACTICE.—EVIDENCE.—EXAMINATION OF CO-DEFENDANT.

*Notwithstanding the 6 & 7 Vict. c. 85, the evidence of a co-defendant cannot be read, where both defendants have exactly the same cases.*

THE suit was instituted for specific performance of an agreement relating to a house at New Charlton, near Woolwich. The only point of any interest arose on the tender by the defendant Guyer, of the evidence of his co-defendant as a witness on his, Guyer's, behalf. The stat. 6 & 7 Vict. c. 85, s. 1, enacts, that in courts of equity one defendant may be examined on behalf of a plaintiff, or a co-defendant, saving just exceptions, and that any interest such de-

fendant so to be examined may have in the matter, or any of the matters in question in the cause, shall not be deemed to be a just exception to the testimony of such defendant, but shall only be considered as affecting or tending to affect, the credit of such defendant as a witness.

Mr. Russell and Mr. Pigott appeared for the plaintiff, and

Mr. Bacon and Mr. Beales for the defendants.

His Honour was of opinion, that in a case like the present, where the case of two defendants was precisely the same, one could not be examined as a witness for the other. Whatever might be the opinion of any other judge upon the proper construction to be put upon this act of parliament, he would decline to be the first judge to hold that one defendant could be examined as a witness for his co-defendant, both having the same case.

### Queen's Bench.

(Before the Four Judges.)

*The Proprietors of the Cork and Bandon Railway Company v. Cazenove.* T. T. 1847.

INFANT SHAREHOLDER.—RAILWAY CALLS.

*The plea of infancy is not of itself an answer to an action for calls on a railway company under the 8 & 9 Vict. c. 16.*

*Quære, Whether to an action for calls, brought under that statute, any other defence can be set up than one of those mentioned in the 27th section of that act?*

ASSUMPSIT for seven calls. The declaration contained seven counts, one for each call, and was in the common form allowed by the 8 & 9 Vict. c. 16, (the Companies Clauses Consolidation Act,) s. 26, which enacts, "That in any action brought by the company against a shareholder it shall not be necessary to set forth the special matter, but only to declare that the defendant is the holder of one share or more, and is indebted in the sum of money, &c., whereby an action hath accrued." The defendant pleaded, as to the first three counts in the declaration, that the call claimed in each of the said three counts became due while he was an infant under age, and as to the remaining four shares, that he was charged as the registered owner thereof, and that at the time he became such he was an infant under age, to wit, &c., and that since he had become of age he had not registered anew, nor done any act to make himself liable upon the original registration. Demurrer and joinder.

Sir J. Bayley in support of the demurrer. This case depends on the 8 & 9 Vict. c. 16. That statute enacts, (s. 7,) that the shares shall be personal estate, and that (s. 8) every person who shall have subscribed a certain sum, and whose name shall have been entered on the register, shall be deemed a shareholder. The 21st section enacts, that such calls shall be paid when demanded, and that the word shareholder shall include his legal personal repre-

sentative. The 26th section gives a right of action for calls, and prescribes the form of the declaration, and the 27th section enacts, "that on the trial or hearing of such action or suit it shall be sufficient to prove that the defendant at the time of making such call was a holder of one share or more in the undertaking, and that such call was in fact made and notice thereof given; and it shall not be necessary to prove the appointment of the directors who made the call, nor any other matter whatsoever; and thereupon the company shall be entitled to recover what shall be due upon such call, with interest thereon, unless it shall appear that any such call exceeds the prescribed amount, or that due notice of such call was not given, or that the prescribed interval between two successive calls had not elapsed, or that calls amounting to more than the sum prescribed for the total amount of calls in one year had been made within that period." This section describes all that is necessary for the maintenance of the action, and all that is allowed to be set up in the defence. Infancy of the shareholder is not one of the things allowed to be set up. [Mr. Justice Coleridge. Do you mean that nothing but what is there stated could be set up as a defence?] Yes. [Mr. Justice Coleridge. Then if the defendant was a married woman, that fact could not be set up in answer to the action.] It could not. The legislature meant to make every registered shareholder liable, except in the cases there stated. It could not allow an inquiry in every case as to how a person became a shareholder. That infants might be shareholders was a fact contemplated by the statute, for the 79th section expressly declares that an infant may vote by his guardian, and that his vote may be given in person or by proxy.

Mr. Crompton on the other side. Infancy is a common law defence, and cannot be taken away, except by the express words of a statute. There are no such words in this statute. It is true that this statute declares that all persons who are registered shareholders are to be liable to calls, and that in this enactment there is no exception of any particular class of persons, but the old rules of the common law must be applied to construe such an enactment. An infant in all things which stand to his benefit shall have the favour and protection of the law, and in such matters is like other men, but not in things not to his benefit. *Dyer*.<sup>a</sup>

The same doctrine is fully enforced in *Stowell v. Lord Zouche*.<sup>b</sup> The Statute of Bailiffs says, that all persons who are bailiffs shall account and shall be liable to be taken in execution, yet an infant shall not be taken in execution, though he may be a bailiff. The general expressions used in the statute cannot put an end to a common law right, and the defence set up in this plea is therefore a sufficient answer to the action.

Lord Denman, C. J. The statute makes registered shareholders liable for calls. The de-

fendant bears that character; that is not denied, but rather admitted, in the plea. But then it is said that he was an infant when he became a shareholder. That is not at all an answer to this action. If the circumstances under which he became a shareholder were such as to prevent him from making a lawful contract, or if he had on coming of age repudiated the contract, that fact should have been pleaded. But as the statute contemplates the holding of these shares by an infant, the mere plea of infancy as an answer to an action for calls is not sufficient. With respect to the calls coming due subsequent to his coming of age, his acquiescence there sets up the whole transaction.

Mr. Justice *Patteson*. The general rule of law in favour of infants is not now the subject of doubt. The question here is confined to the construction of the act of parliament which makes the holder of shares liable to calls upon all the shares held by him. Then who may be a holder of shares? Among others, minor may, for the 79th section expressly enables him to vote as such in a particular manner.

Mr. Justice *Coleridge* concurred.

Mr. Justice *Erle*. The defendant's plea shows that he had permitted his name to be on the register after he became of age. That was a ratification of his previous acquisition of his shares.

Judgment for the plaintiff.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### Common Law Courts.

#### EVIDENCE.

##### ADMINISTRATOR.

See *Judgment of Manor Court*.

##### ADMISSIONS.

*Construction of notice*.—In an action on a bill of exchange alleged to have been accepted by the defendant, under the style and firm of *A. & Co.*, an order was made by consent, to admit the hand-writing of the acceptance. The notice to admit was as follows:—"Bill of exchange for 121*l.* 10*s.* drawn by the plaintiff, upon and directed to the defendants as *A. & Co.*, and accepted by *B.* for the defendants as *A. & Co.*, payable, &c., and indorsed, &c.: *Held*, that this admission precluded the defendants from denying the authority of *B.* to bind the firm of *A. & Co.* by such acceptance, and was not a mere admission that he signed an acceptance purporting to bind that firm. *Wilkes v. Hopkins*, 1 C. B. 737.

##### AMBIGUITY.

See *Contract*.

##### CONTRACT.

*Ambiguity*.—*Parol evidence*.—The defendant, by a written contract, agreed to sell the plaintiff 60 tons of "ware potatoes," at 5*l.* a ton. It appeared in evidence, that in the neighbour-

hood three qualities of potatoes were known, "wares, middlings, and chats," wares being the largest and best: *Held*, that evidence was not admissible to show that the plaintiff had in fact contracted for the sale to him of a particular kind of ware potatoes, viz., "Regent's wares, whilst those offered to him by the defendant were of an inferior kind, viz., "Kidney wares." *Smith v. Jeffreys*, 15 M. & W. 561.

##### DEED.

See *Recitals in Deed*.

##### DOCUMENTS.

*Place of custody*.—At the trial of a feigned issue to ascertain whether certain townships composing a parish were entitled to the separate appointment of overseers, the master of the workhouse of the union in which the parish was situate produced certain bastardy bonds from the year 1716, which he stated he received about four years ago, but had no knowledge whence they came.

*Held*, that this evidence was properly received, the workhouse being the natural repository for such documents, and one in which it was reasonable to expect to find them. *Slater v. Hodyson*, 33 L. O. 189.

See *Inspection of Documents*.

##### ESTOPPEL.

See *Judgment of Manor Court*.

##### FALSE IMPRISONMENT.

*Special damage*.—In an action of trespass and false imprisonment, where the plaintiff was committed to prison by the defendants, and expenses were incurred in an unsuccessful attempt by the plaintiff to obtain his discharge by suing out a writ of habeas corpus: *Held*, that, if these expenses were admissible in estimating the amount of damages, they could only be given in evidence under an allegation of special damage in the declaration. *Spence v. Mcynell and another*, 33 L. O. 92.

##### HEARSAY.

See *Secondary evidence*.

##### INSPECTION OF DOCUMENTS.

In an action by an allottee of shares in an abortive railway company against a provisional committee-man to recover back the deposit, the court will order the defendant to allow the plaintiff to inspect and take a copy of the parliamentary contract and subscribers' agreement, if it appear that those documents are in the possession or control of the defendant. *Steadman v. Arden*, 4 D. & L. 16.

Case cited in the judgment: *Marrow v. Sanders*, 3 Moore, 671; 1 Brod. & B. 318.

##### JUDGMENT OF MANOR COURT.

*How proved*.—*Effect of former judgment against administrator*.—*Estoppel*.—The judgment of a manor court in a plea of debt is sufficiently proved by production of a minute in the court books, containing entries of the pleadings, but setting forth, as to the judgment, only a form of caption, names of parties and suitors

of the court, and a memorandum that a *venire facias* was executed, verdict found for plaintiff, and final judgment entered for debt and costs, specifying the amounts:—the deputy steward of the court stating that he was present at the trial, and that it was not usual to draw up a more formal judgment; and it appearing that a *levari facias* had issued, reciting a judgment in terms corresponding with the entry.

An administrator sued in the manor court for debt due from the intestate, pleaded, no assets. Replication, that he had assets. Issue thereon, and verdict for plaintiff. Judgment was entered up, execution issued, and *nulla bona* returned. Plaintiff declared in debt, setting forth these proceedings, and alleging that defendant had, at the time of the recovery, assets to be administered, and had cloigned and wasted them. Plea, that, at the time of the recovery, defendant had fully administered, &c., without this, that he had cloigned or wasted, &c. Issue thereon. *Held*, that, on the trial of the issue, defendant could not prove that all assets which had come to his hands at the time of the former recovery had been duly administered. And that the plaintiff might take this objection without having replied the former recovery as an estoppel. *Dawson v. Gregory*, 7 Q. B. 756.

#### LIMITATIONS, STATUTE OF.

*Payments on account within six years.*—*A.*, an attorney, being indebted to *B.* in several sums on bond and simple contract, bearing interest, from time to time stated accounts with *B.*, in which he debited himself with the interest, and took credit for payments which he made from time to time, on account of *B.*, for the rent and tithes of a farm occupied by *B.*, and other disbursements. The latest of these accounts was stated in 1823, and a balance was struck therein in favour of *B.*: up to that time the rents and tithes had nearly balanced the interest, but the rents were then considerably reduced. Afterwards *A.*, who took considerable part in the management of *B.*'s affairs, continued to pay the rents and tithes on *B.*'s account, and stated a further account with *B.* in writing, in which he took credit for the payment of rent and tithes, but inserted no item on the debit side. The latest account stated was in 1842. *B.*, in 1843, sued *A.* for the sums due on simple contract, and interest thereon.

*Held*, that the facts above stated were evidence for the jury, from which they might find that the payments of rent and tithes since 1823 were payments made on account of the interest due on the simple contract debts, so as to take the case out of the Statute of Limitations. *Worthington v. Grimsditch*, 7 Q. B. 479.

Cases cited in the judgment: *Ashby v. James*, 11 M. & W. 542; *Waugh v. Cope*, 6 M. & W. 827.

#### MONEY LENT.

*Evidence to support count for.*—*A.*, in 1837, transferred 1,000*l.* in the 4 per cents. to *B.*,

who possessed other stock of the same description. *B.*, after some years, sold out all his stock, including the 1,000*l.* *B.* made payments to *A.* equal to 5 per cent. upon that sum until *A.*'s death. After the death of *A.*, her executor wrote to *B.* referring to the transaction as a loan of money. *B.* in reply asserted that he was employed by *A.* to purchase an annuity for her, and that he had done so. No purchase of an annuity was proved: *Held*, that there was evidence to go to the jury in support of a count for money lent. *Howard v. Danbury*, 2 C. B. 803.

Case cited in the judgment: *Harrington v. Macmorris*, 5 Taunt. 228.

#### NEGLIGENCE.

1. *Improper driving.*—In an action on the case for improper and negligent driving, in which the declaration alleged generally, that the injury to the plaintiff was caused by the improper and negligent driving of a horse and phaeton by the defendant; it was *held* competent for the plaintiff to show that the defendant drove the horse in a bit or bridle that was not suitable for the purpose.

Improper driving means a neglect to possess, or to use, the requisite degree of skill or strength for the safe conduct of the horse. *Hall v. Barratt*, 33 L. O. 258.

2. *Gas company.*—A gas company incorporated by act of parliament, with the usual powers to take up pavements, &c., for the purpose of laying down and repairing mains, pipes, &c., had for some years supplied gas to a house belonging to the plaintiff; the only means of shutting it off being by a stop-cock within the house, the key of which was kept by the occupier. The last tenant, on quitting, gave notice to the company that he should not require any further supply; and one of their workmen, at his request, removed a chandelier from one of the rooms, leaving the end of the pipe properly secured. The internal fittings were the property of the plaintiff. Whilst the house remained untenanted, the gas, by some unexplained means, escaped, and an explosion took place, by which the house was considerably damaged.

In case against the company, alleging a breach of duty on their part in not taking proper means to prevent the influx of the gas into the house, the judge having, upon the above facts, directed a nonsuit, the court declined to interfere.

Negligence on the part of the plaintiff was held to be an admissible defence under the plea of not guilty. *Holden v. Liverpool New Gas Company*, 3 C. B. 1.

Case cited in the judgment: *Bridge v. Grand Junction Railway Company*, 3 M. & W. 244; 6 Dowl. P. C. 340.

#### NEW TRIAL.

*Verdict against evidence.*—*Rejection of evidence.*—The court will not grant a new trial on the ground of the verdict being against evidence, if it appear upon the notes of the trial

that evidence had been improperly rejected, which, if received, would have warranted the jury in returning the verdict sought to be set aside.

The plaintiff, in the further and better particulars of his demand, delivered under a judge's order, omitted all mention of a sum for which he had given the defendant credit in the particulars delivered with the declaration. At the trial, it appeared that the further particulars were alone annexed to the record; but the defendant offered in evidence the particulars in which the credit was given to him. The undersheriff having refused to receive these particulars in evidence, the jury notwithstanding found a verdict for the defendant. On motion for a new trial, on the ground of the verdict being against the evidence: *Held*, that the court would not grant a new trial, as the particulars tendered in evidence ought to have been received, and, if that had been done, the verdict would have been warranted. *Boulton v. Pritchard*, 4 D. & L. 117.

#### NISI PRIUS, OBJECTIONS AT.

See *Way*, right of.

#### NOTICE TO QUIT.

*Proving notice by copy, without notice to produce.*—A written notice to quit may be proved by production of a copy, though no notice has been given to produce the original. *Doe d. Fleming v. Somerton*, 7 Q. B. 58.

Cases cited in the judgment: *Kine v. Beaumont*, 2 Bro. & B. 288; *Swain v. Lewis*, 2 Cro. M. & R. 261; *S. C.* 3 Tyr. 998.

#### NOTICE TO ADMIT.

See *Admissions*.

#### PAROL EVIDENCE.

See *Contract*.

#### POST-MARK.

*Semble*, if the post-mark of a letter be given in evidence, it ought to be proved, either by persons from the post-office, or by persons who are in the habit of receiving letters from that post-office. *Woodcock v. Houldsworth*, 16 M. & W. 124.

#### PRIVILEGED COMMUNICATION.

See *Slander*.

#### PRODUCTION OF DOCUMENTS.

See *Notice to quit*.

#### RECITALS IN A DEED.

*A.*, by a deed, in which it was recited, that he was seised in fee, mortgaged to *B.* in fee. Indorsed on this deed was a memorandum, signed by *C.*, "that by an indenture of surcharge, bearing date, &c., the within premises were charged by me, the purchaser of the equity of redemption thereof, with the payment of the further sum of 325*l.* and interest."

*Held*, that this amounted to an admission by *C.* that he came in under *A.*, and that he was therefore bound by the recital that bound *A.* *Doe d. Gaisford v. Stone*, 3 C. B. 176.

#### REJECTION OF EVIDENCE.

See *New Trial*.

#### SECONDARY EVIDENCE.

*Sufficient search.*—*Hearsay.*—On examination before removing magistrates, it was deposed, in order to let in secondary evidence of an indenture of apprenticeship (not parochial), that *D.* had possession of it after the apprentice's death, and had stated, in answer to an inquiry, that she, *D.*, had given it to *S.*, the master of a workhouse in which *D.* was an inmate; that *S.* was dead, and *S.*'s widow had stated, in answer to inquiry, that she had searched *S.*'s papers, but could not find the indenture, and had given up all the parish papers to an assistant overseer: it was further deposed, that the said overseer, in answer to inquiry, that he had examined the papers, but did not recollect seeing the indenture, and had handed over the papers to another assistant overseer: and it was proved, that this last had searched the papers, but could not find the indenture: that the master and matron of a workhouse, in which *D.* (after the inquiry first stated) had died, stated, that no papers were found in *D.*'s possession at her death: that the widow of the solicitor who prepared the indenture stated, that her husband's papers were in possession of *P.*; and that the said papers in *P.*'s possession were searched, but the indenture could not be found. On this proof, the magistrates received the secondary evidence. On appeal, proof was given as above, and also direct proof of the search of the papers by *S.*'s widow.

On this proof the sessions received the secondary evidence: *Held*,

1st. That the magistrates and the sessions were to judge for themselves, whether the proof of *bona fide* search was satisfactory, and that this court could not disturb their conclusion without seeing that it was one which they could not legitimately come to.

2ndly. That the conclusion here appeared legitimate in each case, and could not be impeached as derived in part from hearsay evidence. *Reg. v. Inhabitants of Kenilworth*, 7 Q. B. 642.

Cases cited in the judgment: *Rex v. Morton*, 4 M. & S. 48; *Rex v. Denis*, 7 B. & C. 620; *Bishop of Meath v. Marquis of Westminster*, 3 N. C. 183, 200.

#### SLANDER.

*Privileged communication.*—*Evidence of express malice.*—To an action for a libel the defendant pleaded not guilty, and a justification. He offered no proof of the justification, but gave evidence to show that the document was published under circumstances rendering it a privileged and private communication between defendant and a third party.

*Held*, that the jury, in forming their opinion (upon the first issue) whether or not the communication was privileged, ought not to take into consideration the fact that the justification had been pleaded and abandoned. *Wilson v. Robinson*, 7 Q. B. 68.

# UNDERTAKING TO GIVE MATERIAL EVIDENCE.

1. A letter written and posted in county A., and addressed to, and received by, the plaintiff in county B., whereby the defendant admits a part of the debt claimed in the action, is evidence sufficient to satisfy the plaintiff's undertaking to give material evidence in county A. *Hall v. Story*, 16 M. & W. 63.

2. In an action for goods sold, the plaintiff, who was bound by an undertaking to give material evidence in the county of Durham, gave in evidence a letter written by the defendant, admitting part of the claim, which letter was posted in Durham and received in Yorkshire. *Held*, sufficient to satisfy the undertaking. *Hall v. Storey*, 4 D. & L. 345.

Case cited in the judgment: *Gilling v. Dugan*, 1 C. B. 8.

## VERDICT AGAINST EVIDENCE.

See *New Trial*.

## WAY, RIGHT OF.

*Evidence of agreement to explain acts of repair.*—*Objections at nisi prius.*—Defendant, *at nisi prius*, to prove a public right of way over plaintiff's land, showed acts of repair done in a certain year by C., the township surveyor. Plaintiff offered to prove in answer an agreement made in that year, between C. and the steward of plaintiff's predecessor, that C., in consideration of repayment by the steward, should repair a road, which, according to plaintiff's case, was the road now in question. Defendant's counsel objected, because it did not appear that the steward, in that character, had authority to make such agreement. The judge received the evidence, which was not further objected to: and plaintiff had a verdict.

On a motion for a new trial, on account of the improper reception of evidence, the former objection was renewed, and it was argued, also, that the evidence, when given, did not show that the road to which the agreement related was the same as that now in question.

*Held*, 1. That (assuming the roads to be identified) the agreement, even if the steward had no sufficient authority, was evidence to explain the fact of repair, and was properly admitted.

2. That, if the evidence failed to identify the roads, that objection should have been made *at nisi prius*, when the defect appeared, and the judge should have been requested to strike the evidence out of his notes, and that point could not now be raised. *Ferrand v. Milligan*, 7 Q. B. 730.

## WITNESSES.

*Commission to examine.*—Upon a motion, on the part of the defendants, for a commission to examine witnesses abroad, it was required that it should appear to the satisfaction of the court, upon an affidavit from *their attorney*, that the evidence of the witnesses proposed to be examined was material and necessary to the defence of the action. *Healy v. Young*, 2 C. B. 702.

# THE EDITOR'S LETTER BOX.

THE next volume of the *Legal Observer* will be further enlarged, in order to increase the number and value of the **REPORTS OF RECENT DECISIONS**, without curtailing any of the Original Articles, or select Information, for which the Work has been distinguished. We trust, indeed, to improve also the scope of our original disquisitions.

In carrying this improvement into effect, and to enable the Reports of Cases and other Court business to be collected together and readily referred to—the work will be divided into two parts.

The 1st Part, containing original articles on all projected alterations in the Law and Practice;—the state of the Profession and measures for its improvement;—New Statutes, with explanatory notes and disquisitions on their construction;—Parliamentary Bills, Reports and Returns:—Notes or Commentaries on important Decisions in Common Law, Equity, and Conveyancing:—the Law of Railways, Insurance, and other Joint Stock Companies:—Review of New Books:—The Law of Attorneys and Costs, and the Examination of Articled Clerks:—Proceedings of Law Societies:—Legal Biography; Correspondence; Professional Lists, &c.

The 2nd Part containing *original and early* Reports of every important Decision in all the Superior Courts, by Barristers of the several Courts:—New Rules and Orders of Court;—an Analytical Digest of all Reported Cases in all the Courts—classified according to the leading subjects adjudicated upon;—Cause Lists;—Circuits;—Sittings; and every other information relating to the business of all the courts.

The price will remain the same as at present, viz.: 8d., or stamped 9d.

A correspondent at Birmingham refers "Tacitum" to the 6th section of the New County Courts Act, which repeals the 8 & 9 Vict. c. 127, and every other act, &c. so far as the same affect or relate to the jurisdiction, &c. of that court or give jurisdiction to any other court, &c.; sect. 7 provides for proceedings commenced previously to the passing of the act, and the sects. 98 and 99, for unsettled judgments, &c. in courts holden by virtue of that act, or under any act repealed by that act, for the payment of any debt, &c.

The letter from Rochester shall be inserted.

We will endeavour to procure a fuller report of the case of *Richard v. Kingdon*, 33 L. O. 477.



# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, SEPTEMBER 18, 1847.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

## PRIVILEGE OF MEMBERS OF PARLIAMENT FROM ARREST.

THIS subject, which was discussed in a former number,<sup>a</sup> as a question of law, has subsequently, as it might readily have been anticipated it would have done, been brought under the consideration of one of the learned judges sitting at chambers, as a matter of judicial decision.

Mr. Thomas Duncombe, one of the members for the Borough of Finsbury, whilst sojourning in Yorkshire, was arrested under a writ of *capias*, addressed to the sheriff of that county, on the 3rd of September, and applied to Mr. Justice Williams, the sitting judge at chambers, to be discharged, on the ground that he was exempted from arrest by reason of his privilege as a member of parliament. The authorities to which our readers' attention have already been directed were nearly all brought under the notice of the learned judge, who finally made an order for the discharge of the defendant from custody, upon condition that no action should be brought for the arrest.

As we ventured to intimate, the extent of the privilege is involved in some doubt, and in such a case the learned judge was clearly justified in deciding in favour of liberty. The learned judge's order, however, may become the subject of an appeal to the court in which the action is depending, in Michaelmas Term, and we confess we should be glad the question was more fully discussed than it appears to have

been on this occasion at chambers, and that its determination was founded on something more solid and satisfactory than a vague passage from Blackstone's Commentaries,<sup>b</sup> a work which with all its merit cannot be regarded as the most precise or accurate legal authority.

Concurring with those, however, who desire to see our legislative institutions respected as well as powerful, we should greatly prefer finding the question set at rest for ever, by the voluntary relinquishment of a privilege which the altered circumstances of society no longer renders necessary for the preservation of parliamentary independence. That the abandonment of such an odious distinction would be expedient, can scarcely be denied by those who agree with us in considering that its assertion never fails to reflect discredit not only on the individual who resorts to such a protection from the ascertained claims of a creditor, but also upon the body who struggle to maintain an exemption from the operation of laws the pressure of which is seldom complained of by any but the improvident and dishonest.

It will be recollected that in the session before the last, a bill was introduced by Lord Brougham on this subject; and doubtless it will be again brought forward. We shall, therefore, in our next number, while the matter is before the public, enter somewhat at length into the general policy of the question.

<sup>1</sup> Blac. Com. p. 165.

<sup>a</sup> See *ante*, p. 336.

## VACATION FEES UPON ISSUING FIATS IN BANKRUPTCY.

A REPORT has gone the round of the morning papers, of a statement alleged to have been made by Mr. Lloyd, of Milk Street, as to the expense of obtaining the Lord Chancellor's signature to a fiat in bankruptcy, which, we understand, is incorrect, and which we have been requested to notice.

Mr. Lloyd is erroneously supposed to have stated that he had paid a sum of 14*l.* 14*s.* for obtaining the Chancellor's signature to a fiat issued at the instance of a bankrupt, upon a declaration of Insolvency. We understand the fact to have been, that Mr. Lloyd stated he paid the sum of 12*s.* 6*d.*, being his proportion of the expenses of a journey to obtain the Chancellor's signature, in addition to the ordinary fees paid upon the issue of a fiat, which, we believe, amount to 1*l.* 12*s.* 6*d.* in the first instance, and a further sum of 8*l.* 7*s.* 6*d.*, making together the 10*l.* required by the stat. 6 Geo. 4, c. 16, s. 4.

The additional sum of 14*l.* 14*s.* would have amounted in certain cases to a positive prohibition. It greatly exceeds the compensation allowed to a solicitor in many instances for his personal exertions in working a fiat from first to last. We were quite sure, even before we made the inquiry, that there must have been an error in the statement: it would have been perfectly monstrous to impose a tax of such magnitude either on a bankrupt desiring to divide the remnant of his estate amongst his creditors, or upon creditors suing out a fiat with the view of administering a bankrupt estate. The payment of even so small a sum as 12*s.* 6*d.*, in addition to the usual fees, however, we consider objectionable in principle. Those who practise in the Court of Bankruptcy complain, not without some show of reason, that they have no vacation. A commissioner sits in that court six days in every week, all the year round, for the purpose of opening fiats, hearing cause shown against summonses served on trader debtors, considering the sufficiency of bonds entered into under the statute 1 & 2 Vict. c. 110, s. 8, and disposing of other business of a peremptory nature.

The urgency and uncertainty of commercial transactions renders this continuous attention to the affairs of a bankrupt more than expedient. It is indispensable to effectuate that which is the great ob-

ject of the Bankruptcy Laws,—the equal distribution of the bankrupt's property amongst *all* his creditors. A fiat sued out at the instant, is frequently the only means the law provides, by which an importunate or a well-informed creditor is prevented from protecting himself from loss at the expense of all the other creditors, by sweeping away the entire property of a trader. Judgments may be signed and executions issued, as well during the long vacation as at other periods of the year. It is only reasonable, therefore, that the machinery by which the Bankrupt Laws are put into operation should be equally accessible at every period.

No one could desire that the Lord Chancellor, who needs relaxation at least as much as any other member of the profession, should remain in town during the long vacation, merely to affix his signature to fiats in bankruptcy. Means might readily be devised by which a direct personal application to his lordship in such case could be dispensed with. By analogy to the practice of the Common Law Courts, it is now understood, that one of the equity judges remains in London or its neighbourhood during the long vacation, to attend to applications that do not admit of postponement. The vacation judge might surely be entrusted with the charge of signing fiats, which, we apprehend, is a mere ministerial duty, when the preliminary forms have been complied with and are regular.

At all events, we are satisfied that the attention which has now been directed to the subject, will prevent the establishment of an objectionable practice. When the emoluments of professional men have been reduced to so low a scale, as to render it questionable to some persons, whether the profession can continue to be conducted independently, it is certainly not the time for imposing an additional burthen on suitors by the creation of new official fees of any amount. The reduction, if not the total abolition, of official fees, is one of the objects to which all who are sincerely desirous of seeing the profession placed on a better footing might advantageously direct their efforts.

We ought perhaps to add, that it is only when a fiat issues upon a bankrupt's own petition, under the 7 & 8 Vict. c. 96, that the Chancellor's signature is necessary. In ordinary cases, the fiat is signed by one of the masters.

## LAW OF ATTORNEYS.

## EFFECT OF THE NON-DELIVERY OF A SIGNED BILL UNDER A PLEA OF SET-OFF.

THE provision of the statute which obliges a solicitor or attorney to deliver a signed bill to the party charged one month before action, was the subject of judicial construction in a recent case in the Court of Queen's Bench.<sup>c</sup> To an action of assumpsit the defendant pleaded, as to part of the amount claimed, that the action was brought to recover fees due to the plaintiff as an attorney, and that no signed bill had been delivered pursuant to the statute; and he also pleaded a set-off to the whole declaration. At the trial the plaintiff showed that there had been several money advances made by him to the defendant, but was unable to prove the delivery of a signed bill, so as to maintain the action for services as an attorney. The defendant, however, in endeavouring to meet the plaintiff's claim as proved under his plea of set-off, put in evidence an account rendered to him by the plaintiff, by which the latter charged himself with some sums due to the defendant, and on the other side discharged himself by items due for his costs as an attorney. The result of the account was, that there was a balance of 53*l.* due to the plaintiff, but if the item for costs were excluded, there would be a balance of 20*l.* due to the defendant.

Mr. Justice Erle, who tried the cause at *nisi prius*, held, that the defendant having put in the account, must be taken to have put in both sides of it, and was not entitled to withdraw from consideration the amount of the costs, upon the ground that the plaintiff could not recover them, inasmuch as no signed bill was proved to have been delivered. The plaintiff, upon this ruling, had a verdict on the issue raised by the plea of set-off, the issue being entered for defendant on the plea denying the delivery of a signed bill. An application was afterwards made to the full court for a new trial on the ground of misdirection, and it was urged that the plaintiff could not be permitted to set off his bill of costs, not being in a position to recover these costs, as no signed bill had been delivered by him.

The court after taking time to consider, upheld the ruling of the learned judge at *nisi prius*, and overruled the objection, expressly on the ground that "the non-delivery of a signed bill of costs by an at-

torney does not prevent the debt from attaching, but only operates to prevent an action being brought to recover it." The motion for a new trial was therefore refused.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE CITY OF LONDON SMALL DEBTS COURT.  
10 & 11 VICT. c. lxxi. (Local).

An Act for the more easy Recovery of Small Debts and Demands within the City of London and the Liberties thereof. [2nd July, 1847.]

## CONSTITUTION OF THE COURT, OFFICERS, &amp;c.

5 & 6 W. 4, c. 94. *Actions to be hereafter commenced in the Sheriff's Court, for sums not above 20*l.* to be heard and determined under the provisions of this act.*—Whereas by an act of parliament passed in the session of parliament held in the 5 & 6 W. 4, c. xciv., intituled "An Act for amending and consolidating the Acts of Parliament for the Recovery of Small Debts in the City of London and the Liberties thereof, and for enabling the Goods of the Debtors to be taken in execution," the various acts then in force for establishing and regulating the Court of Requests in the city of London for the recovery of small debts within the said city and the liberties thereof, and thereby severally recited, were repealed; and by the said act certain persons therein named or referred to were nominated and appointed commissioners of the said Court of Requests, to sit as usual in the said court for the period and in the rotation therein mentioned; and by the said act powers were granted for the establishment of the said court, and for carrying on the business thereof: And whereas the city of London is a county of itself: And whereas the *Sheriffs' Court*<sup>d</sup> of the city of London is a court of ancient jurisdiction, having cognizance of all pleas of personal actions to any amount: And whereas it is expedient that the manner of proceeding in the said court for the recovery of small debts and demands should be altered and regulated, and that the Court of Requests established under the said recited act of parliament should be abolished: May it therefore please your Majesty that in may be enacted; And be it enacted,

1. That all pleas of personal actions, where the debt or damage claimed is not more than 20*l.*, whether on balance of account or otherwise, which shall hereafter be commenced or tried in the *Sheriffs' Court*, shall be holden in the said court without writ, and shall be heard and determined in a summary way, and according to the provisions of this act: Provided always, that the said court shall not, under the provisions of this act, have cognizance of any action of ejectment, or in which, although the debt or damage claimed may not exceed 20*l.*,

<sup>d</sup> This act abolishes the City Court of Requests and extends the jurisdiction of the *Sheriffs' Court*. The court, though it will have the power, will not be called the *County Court*, but retain its ancient name.

<sup>c</sup> *Harrison v. Turner*, 16 Law J., 295. Q. B.

the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise shall be in question, or in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed, or in any action for any libel or slander, or for criminal conversation, or for seduction, or for breach of promise of marriage.

2. *All other actions and proceedings to be carried on as if this act had not passed.*—That all pleas of personal actions, and all other proceedings in the Sheriffs' Court, except the trial, under the provisions of this act, of pleas of personal actions where the debt or damage claimed is not more than 20*l.*, or, not being more than 20*l.*, is excepted from the provisions of this act, shall and may be commenced and carried on in the said court as if this act had not been passed; and all proceedings in personal actions where the debt or damage claimed is not more than 20*l.*, which may have been actually commenced in the Sheriffs' Court before the commencement of this act, and which might have been commenced in the said court under the provisions of this act, shall be continued, executed, and enforced against all persons liable thereto in the same manner as if they had been commenced therein under the provisions of this act; and all other proceedings in the said court, not being proceedings in personal actions where the debt or damage claimed is not more than 20*l.*, and which could not have been commenced in the said court under the provisions of this act, shall be continued, executed, and enforced against all persons liable thereto in the same manner in all respects as they might have been continued, executed, and enforced in case this act had not passed.

3. *Court to be held at Guildhall.*—That the said court shall, as well for the purposes of this act as for all other purposes, be held at the Guildhall within the city of London, or at such other place within the said city as the mayor, aldermen, and commons of the said city in common council assembled shall from time to time by any order direct or appoint.

4. *Mayor, &c., to appoint days and place for holding court.*—That it shall be lawful for the mayor, aldermen, and commons from time to time to appoint the place and day or days for holding the Sheriffs' Court for the purposes of this act; and the order for the first holding of the said court for the purposes of this act shall be published in two London daily morning newspapers, and shall be stuck up at the principal door or entrance of the said Guildhall, and shall be continued so stuck up for the period of one month at the least before the day appointed for the first holding the said court.

5. *After commencement of this act existing Court of Requests to be abolished.*—That from and after the commencement of this act the said existing Court of Requests for the recovery of small debts in the said city and the liberties thereof shall be abolished; and the said recited act of parliament of the session held in the 5 & 6 W. 1. shall be and the same is hereby repealed.

6. *All proceedings commenced under recited*

*act in Court of Requests to be continued in Sheriffs' Court under this act.*—That all proceedings in the said Court of Requests, or otherwise in execution of the said recited act, commenced before the commencement of this act, shall be as valid to all intents and purposes as if this act had not been passed, and may be continued, executed, and enforced in the Sheriffs' Court, under the provisions of this act, against all persons liable thereto, in the same manner in all respects as if they had been commenced in the said court under the provisions of this act.

7. *Judge of Sheriffs' Court to preside in actions under this act.*—That the judge of the Sheriffs' Court shall preside at the trial in the said court of all actions and proceedings commenced or directed to be carried on therein under the provisions of this act.

8. *Judge of court may appoint a deputy in case of illness, &c.*—That in case of illness or unavoidable absence, not occasioned by his other official duties, the cause whereof shall be entered on the minutes of the court, it shall be lawful for the judge of the Sheriffs' Court, or, in case of the inability of the judge to make such appointment, for the said mayor, aldermen, and commons to appoint some other person, who shall have practised as a barrister-at-law for at least seven years, to act as the deputy of such judge during such illness or unavoidable absence; and it shall also be lawful for the judge, with the approval of the said mayor, aldermen, and commons, to appoint a deputy, who shall have practised as a barrister for at least three years, to act for him for any time or times not exceeding in the whole two calendar months in any consecutive period of twelve calendar months; and every deputy so appointed, during the time for which he shall be so appointed, shall have all the powers and privileges and perform all the duties of the judge of the said court.

9. *Chamberlain to be treasurer of Sheriffs' Court.*—That the chamberlain for the time being of the city of London shall for the purposes of this act, be and be considered as the treasurer of the Sheriffs' Court.

10. *Clerks, &c., in the Chamberlain's office to perform such duties in reference to the office of treasurer as shall be required, and shall be paid an extra salary for the same.*—That the several clerks and other officers and servants for the time being employed in the office of the chamberlain of the said city shall from time to time perform such duties in reference to the court and the office of treasurer thereof, hereby imposed on the said chamberlain, as the chamberlain for the time being in his character of treasurer of the court shall require; and every clerk, officer, and servant of the chamberlain so employed in performing any of the duties of the treasurer of the court, shall receive and be paid by the said mayor, aldermen, and commons, out of the general fund of the board, such extra salary or allowance as a remuneration for their services as the said mayor, aldermen, and commons shall from time to time think sufficient and proper.

**11. Power to mayor, &c., to appoint chief clerk, who shall be an attorney, and from time to time remove him.—Clerk to be paid by fees.—Appointment of assistant clerks, if necessary.—**That every chief clerk of the court to be hereafter appointed, shall be an attorney of one of her Majesty's superior courts of common law, who shall have practised as an attorney for at least five years; and such clerk shall be appointed by the said mayor, aldermen, and commons; and in case of inability or misbehaviour of the clerk for the time being of the court, it shall be lawful for the said mayor, aldermen, and commons to remove such clerk, and to appoint some other person, qualified as aforesaid, to be clerk of the court; and, until otherwise directed by the said mayor, aldermen, and commons, every such clerk shall be paid by fees, as hereinafter provided; and in case any assistant clerk or clerks shall be necessary for carrying on the business of the court, such assistant clerk or clerks shall, during such time as the chief clerk shall be paid by fees, be provided and paid by the chief clerk of the court, but if the chief clerk shall at any time be paid by a salary and not by fees, then the assistant clerk or clerks shall be appointed by the said mayor, aldermen, and commons, and shall be paid out of the general fund of the court such yearly salary for their services as the said mayor, aldermen, and commons shall from time to time think proper.

**12. Chief clerk, with approval of judge, may appoint a deputy in case of illness, &c.—**That it shall be lawful for the chief clerk of the court, with the approval of the judge, or, in case of the inability of the chief clerk to make such appointment, for the judge, from time to time to appoint a deputy, qualified to be appointed chief clerk of the court, to act for the chief clerk of the court at any time when he shall be prevented by illness or unavoidable absence from acting in such office, and to remove such deputy at his pleasure; and such deputy, while acting under such appointment, shall have the like powers and privileges, and be subject to the like provisions, duties, and penalties for misbehaviour as if he were the chief clerk of the court for the time being.

**13. Duties of clerks.—**That the clerk of the court, with such assistant clerk or clerks as aforesaid, in case any such shall be employed, shall issue all summonses, warrants, precepts, and writs of execution, and register all orders and judgments of the court, and keep an account of all proceedings of the court, and shall take charge of and keep an account of all court fees and fines payable or paid into court, and of all monies paid into and out of court, and shall enter an account of all such fees, fines, and monies in a book belonging to the court, to be kept by him for that purpose, and shall from time to time, at such times as shall be directed by order of the court, submit his accounts to be audited or settled by the treasurer.

**14. Offices of clerk, treasurer, and bailiff not to be conjoined.—**That it shall not be lawful for the clerk of the court, or the partner of any such clerk, or any person in the service or employ-

ment of any such clerk or his partner, to act as treasurer or as a bailiff of the court, or for the treasurer, his partner or clerk, or any person in the service or employment of such treasurer or his partner, to act as clerk or as a bailiff, or for any bailiff, his partner or clerk, or any person in the service or employment of any bailiff or his partner, to act as clerk or treasurer of the court.

**15. Clerk, &c., not to act as attorneys in the court.—**That no clerk, treasurer, bailiff, or other officer of the court shall, either by himself or his partner, be directly or indirectly engaged as attorney or agent for any party in any proceeding in the court.

**16. Penalty of 50*l.* on non-observance of the two previous enactments.**

**17. Power to mayor, &c., to appoint bailiffs of the court.—**That there shall be one or more bailiff or bailiffs of the court; and such bailiff or bailiffs shall be appointed by the said mayor, aldermen, and commons; and, in case of the inability or misbehaviour of any such bailiff or bailiffs, it shall be lawful for the said mayor, aldermen, and commons, or the judge of the court, by an order of court, to remove such bailiff or any of such bailiffs; and one of the bailiffs of the court, if there shall be more than one, shall be called the chief bailiff of the court.

**18. Duties of the bailiffs, &c.—**That the said bailiffs or one of them shall attend every sitting of the court for such time as shall be required by the judge, unless when their absence shall be allowed for reasonable cause by the judge, and shall by themselves serve all the summonses and orders, and execute all the warrants, precepts, and writs, is sued out of the court under the provisions of this act; and the said bailiffs shall, in the execution of their duties, conform to all such general rules as shall be from time to time made for regulating the proceedings of the court as herein-after provided, and subject thereunto to the order and direction of the judge; and the said bailiffs shall be entitled to receive all fees and sums of money allowed by this act in the name of fees payable to the bailiff, out of which they shall provide for the execution of the duties for which such fees are allowed, and for the payment of the bailiffs according to such scale of remuneration as shall be from time to time approved by the judge; and every such bailiff shall be responsible for all the acts and defaults of himself, in like manner as the sheriff of any county in England is responsible for the acts and defaults of himself and his officers.

**19. Officers performing duties under recited act may be appointed under this act.—**That the persons holding the offices or performing the duties of clerk, assistant clerk, beadle, or serjeant in the said Court of Requests under the said recited act, at the time of the passing of this act, and who shall continue respectively to hold the same offices or to perform the same duties at the time when the said act shall be repealed under the provisions of this act, whether or not qualified as herein-before provided, if the said mayor, aldermen, and commons think fit, be appointed to be clerks and ba

of the Sheriffs' Court for the purpose of this act, and, if so appointed, shall continue to execute their several offices, subject to the power of removal provided in this act.

20. Treasurers, clerks, and bailiffs to give security.

21. *Fees to be taken according to schedule A. to this act, and tables to be exhibited in conspicuous places.*—That on every proceeding in the court under the provisions of this act there shall be payable to the judge, clerk, and bailiffs of the court such fees as are set down in the schedule marked (A.) to this act annexed, or which shall be set down in any schedule of fees reduced or altered under the power herein-after contained for that purpose, and none other; and a table of such fees shall be put up in some conspicuous place in the place where the court shall be held, and in the clerk's office: and the fees on every proceeding shall be paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had on or before such proceeding, and in default of payment thereof shall be enforced by order of the judge by such ways and means as any debt or damage ordered to be paid by the court can be recovered; and the fees upon execution shall be paid into court at the time of the issue of the warrant of execution, and shall be paid by the clerk of the court to the bailiff upon the return of the warrant of execution, and not before: Provided always, that it shall be lawful for the mayor, aldermen, and commons to lessen the amount of the fees to be taken in the court under the provisions of this act, in such manner as to them shall seem fit, and again to increase such fees so that the scale of fees given in the schedule to this act be not in any case surpassed; and in case the fees allowed to be taken by the judge, clerk, or bailiffs of the court shall appear to the said mayor, aldermen, and commons to be more than sufficient, it shall be lawful for the mayor, aldermen, and commons to order that a certain part of their fees only shall be paid to them respectively, as the greatest salaries to be by them respectively received; and in such case, and so long as such direction shall be in force, the amount of the residue of the fees shall be accounted for and paid to the treasurer of the court for the purposes of this act, and shall form part of the general fund of the court.

22. *Compensation for persons whose rights or emoluments will be diminished.*—That every person who shall have been entitled to any office or to any fees or salary for his services in the execution of the said recited act under which the existing Court of Requests in the said city is holden shall be entitled to make a claim for compensation to the mayor, aldermen, and commons within six calendar months after the commencement of this act; and it shall be lawful for the mayor, aldermen, and commons, in such manner as they shall think proper, to inquire what was the tenure of any such office, and what were the lawful fees and emoluments in respect of which such compensation should be allowed; and the mayor, al-

dermen, and commons in each case shall award such gross or yearly sum, and for such time as they shall think just to be awarded, upon consideration of the special circumstances of each case; and all such compensations shall be paid out of the general fund of the court, to be formed under the provisions of this act: Provided always, that if any person holding any office in the said Court of Requests shall be appointed after the passing of this act to any office or situation in the Sheriffs' Court, the payment of the compensation awarded to him under this act, so long as he shall continue to receive the salary or emoluments of such office or employment, shall be suspended if the amount of such salary or emoluments is greater than the amount of such compensation, or, if not, shall be diminished by the amount of such salary or emoluments.

23. *Officers of court may be paid by salaries instead of fees. If court abolished, no compensation allowed except in certain case.*—That it shall be lawful for the mayor, aldermen, and commons to order that the judge, clerk, bailiffs, and officers of the court, or any of them, shall be paid by salaries instead of fees, or in any manner other than is provided by this act; and if the mayor, aldermen, and commons shall make such order, or if any act shall be passed whereby it shall be provided that the court shall be otherwise constituted than is provided by this act, no such clerk or bailiff, nor any judge, treasurer, or other officer of the court, shall be entitled to any compensation on account of ceasing to hold his office or to receive the fees allowed by this act, or on account of his emoluments being affected by such alteration, unless he shall have acted as clerk, bailiff, or other officer of the said Court of Requests before the passing of this act, in which case he shall be entitled to compensation for the loss of his fees or emoluments, in like manner, and subject to the same regulations, as he would have been entitled to, under the provisions herein contained, in case he had been deprived of any fees or emoluments by reason of the passing of this act; and in such case all sums payable in the name of fees to such officers of the court as shall be paid by salaries shall be paid from time to time to the treasurer of the court, who shall pay the said several salaries out of the proceeds of such fees, and the surplus shall form part of the general fund of the court; and whenever the net amount of the fees shall not be sufficient to pay the said several salaries, the deficiency shall be made good and paid out of the corporate funds of the said city, or such of them as the said mayor, aldermen, and commons shall think proper and direct.

24. *Clerk of court to deliver to the treasurer an account of fees and fines as often as required.*—That the clerk of the court from time to time, as often as he shall be required so to do by the treasurer or judge of the court, and in such form as the treasurer or judge shall require, shall deliver to the treasurer a full account in writing of the fees received in the

court under the authority of this act, and a like account of all fines imposed by the court under the provisions of this act, and of the expenses of levying the same; and shall pay over to the treasurer, quarterly or oftener in every year by order of the court, the monies remaining in his hands over and above his own fees and such balance as he shall be allowed, by order of the court, to retain for the current expenditure of the court.

25. *Treasurer to audit accounts of clerk, and receive balances from time to time.*—That the treasurer of the court shall from time to time, quarterly or oftener, as shall be directed by order of the court, audit and settle the accounts of the clerk and other officers of the court, and shall receive the balance of the various monies which such clerk and other officers shall have received under this act, and shall pay over to the judge of the court the amount of his fees, and make all such other payments as it shall be requisite to make thereout in accordance with the provisions of this act, and shall from time to time carry the balance remaining in his hands, or so much thereof as he shall be directed to carry to such account, as the mayor, aldermen, and commons shall direct.

26. *Treasurer of court to render accounts to mayor, &c. when required.*—That the treasurer of the court shall, once in every year, and oftener if required, on such day as the mayor, aldermen, and commons from time to time shall appoint, render to the mayor, aldermen, and commons a true account in writing of all monies received and of all monies disbursed by him on account of the court during the period comprised in such account, in such form, and with such particulars of receipt and disbursement or otherwise, as the mayor, aldermen, and commons shall from time to time require.

27. *Mayor, &c., to direct how balances shall be applied.*—That the mayor, aldermen, and commons shall from time to time make such rules as to them shall seem meet for securing the balances and other sums of money in the hands of any officer of the court, and for the due accounting for and application of all such balances and other sums of money.

28. *Clerk to send to mayor, &c. Accounts of all sums paid by him to treasurer.*

29. *Mayor, &c., may provide court houses, offices, &c.*

30. *Any gaol in the city of London may be used as a prison for the purposes of this act.*

31. *8 & 9 Vict. c. 18, as to purchase of land to apply to this act.*

32. *Mayor, &c., empowered to borrow money for the purposes of this act.*

33. *A general fund to be raised for paying off money borrowed.*

34. *Property of Court of Requests to vest in the treasurer of the court under this act.*

35. *If separate court house established, the clerk to have the charge thereof, and to appoint and dismiss servants, &c.*—That if a separate court house shall be built, purchased, or hired for the purposes of the Sheriffs' Court, the clerk of the court shall have the care of such

court house and offices of the court, and shall appoint, and have power to dismiss, the necessary servants for taking charge of such court house and offices, at such salaries as shall be from time to time authorized by the judge with the consent of the mayor, aldermen, and commons; and the clerk of the court, under the direction of the mayor, aldermen, and commons, and subject to such regulations as they may require to be enforced, shall in every case make all necessary contracts, or otherwise provide, for repairing and furnishing, and for cleaning, lighting and warming the court house for the time being and offices, and for supplying the said court and offices with law and office books and stationery, and for defraying all other necessary expenses, not otherwise provided for, incident to the holding of the court; and the charge of the court house and offices, and expenses thereby incurred, shall be paid out of the general fund of the court; provided always, that the treasurer or clerk of the court, or the partner of such treasurer or clerk, or any person in the service or employment of such treasurer or clerk, shall not be directly or indirectly concerned or interested in any such contract, or in supplying any articles for the use of the court and offices; provided also, that no payment of any such charge shall be allowed in the clerk's accounts until allowed under the hand of the judge.

36. *Judge to hold the court where mayor, &c., shall direct.*—*Notices for holding courts to be put up in the court and in the clerk's office.*—That the judge of the Sheriffs' Court shall attend and hold the said court for the purposes of this act at the place where the mayor, aldermen, and commons shall have ordered that the said court shall be holden, at such times as they shall appoint for that purpose, so that a court shall be holden for the purposes of this act once at least in every calendar month; and notice of the days on which the court will be holden for the purposes of this act shall be put up in some conspicuous place in the court and in the office of the clerk of the court, and no other notice thereof shall be needed; and whenever any day so appointed for holding the court shall be altered, notice of such intended alteration, and of the time when it will take effect, shall be put up in some conspicuous place in the court and in the clerk's office.

#### PROCESS AND PROCEEDINGS.

37. *Process of the court to be under seal.*—That a seal shall be made for the Sheriffs' Court for the purposes of this act; and all summonses and other process issuing out of the said court, under the provisions of this act, shall be sealed or stamped with the seal of the court; and every person who shall forge the seal or any process of the court, or who shall serve or enforce any such forged process knowing the same to be forged, or deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of the said court knowing the same to be false, or who shall act or profess as



act under any false colour or pretence of the process of the said court, shall be guilty of felony.

38. *Acts 7 & 8 Vict. c. 96, and 8 & 9 Vict. c. 127, not to extend to this act.*—That none of the provisions and enactments of an act passed in the 8 Vict., intituled, "An Act to amend the Laws of Insolvency, Bankruptcy, and Execution," or of an act passed in the 9 Vict., intituled, "An Act for the better securing the Payment of Small Debts," shall extend or relate to or affect the jurisdiction and practice of the Sheriffs' Court in any action or proceeding to be commenced or carried on therein under the powers and provisions of this act.

39. *Suits to be by plaint.*—That on the application of any person desirous to bring a suit in the court, the clerk of the court shall enter in a book, to be kept for this purpose in his office, a plaint in writing stating the names and the last known places of abode of the parties, and the substance of the action intended to be brought, every one of which plaints shall be numbered in every year according to the order in which it shall be entered; and thereupon a summons, stating the substance of the action, and bearing the number of the plaint on the margin thereof, shall be issued under the seal of the court, according to such form, and be served on the defendant so many days before the day on which the court shall be holden at which the cause is to be tried as shall be directed by the rules made for regulating the practice of the court, as hereinafter provided; and delivery of such summons to the defendant, or in such other manner as shall be specified in the rules of practice, shall be deemed good service; and no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same, so that the person or place be therein described so as to be commonly known.

40. *Summons may issue though cause of action may not arise in the city.*—That such summons may issue provided the defendant or one of the defendants shall dwell or carry on his business within the city of London or the liberties thereof at the time of the action brought; or provided the defendant or one of the defendants shall have dwelt or carried on his business therein at some time within six calendar months next before the time of the action brought; or if the cause of action arose therein.

41. *Precincts, &c., within the city of London, &c., to be deemed parts thereof.*—That all precincts and extra-parochial places within the city of London or the liberties thereof, or adjoining thereto, shall, for the purposes of this act, be deemed to be parts of the city of London and the liberties thereof.

42. *Processes out of district of court may be served by bailiff of any other court.*—9 & 10 Vict. c. 95.—That any summons or other process which under this act shall be required to be served out of the city of London or the parts thereof may be served by the bailiff of any court holden in any part of England, under

an act passed in the 9 & 10 Vict., intituled, "An Act for the more easy Recovery of Small Debts and Demands in England, and such service shall be as valid as if the same had been made under the provisions of this act by the bailiff of the Sheriffs' Court within the city of London or the liberties thereof.

43. *As to service of process of County Courts in the city of London.*—That any summons or other process which under the before-mentioned Act for the more easy Recovery of Small Debts and Demands in England and Wales shall be required to be served out of the district of the court from which the same shall have issued may be served within the city of London or the liberties thereof by the bailiff of the Sheriffs' Court; and such service shall be as valid as if the same had been made by the bailiff of the court out of which such summons or other process shall have issued within the jurisdiction of the court for which he acts.

44. *Proof of service out of district, or in the absence of the bailiff.*—That service of any summons or other process of the court which shall require to be served out of the city of London or the liberties thereof may be proved by affidavit purporting to be sworn before any judge of a County Court, or before a Master Extraordinary in Chancery, or any person now authorized by law to take affidavits; and the fee for taking such affidavit shall not be more than 1s., and shall be costs in the cause; and in every case of the unavoidable absence of the bailiff by whom any summons or other process of the court shall have been served, the service of such summons or other process may be proved, if the judge shall think fit, in the same manner as a summons served out of the city of London or the liberties thereof, but without additional charge to either of the parties to the suit.

#### JURISDICTION OF THE COURT.<sup>c</sup>

45. *Demands not to be divided for the purpose of bringing two or more suits.*—That it shall not be lawful for any plaintiff to divide any demand or cause of action for the purpose of bringing two or more suits in the court; but any plaintiff having any demand or cause of action for more than 20*l.*, for which a plaint might be entered under this act if not for more than 20*l.*, may abandon the excess of such demand over and above 20*l.*, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding 20*l.*; and the judgment of the court upon such plaint shall be in full discharge of all claims in respect of such demand or cause of action, and entry of the judgment shall be made accordingly.

46. *Minors may sue for wages.*—That it shall be lawful for any person under the age of 21 years to prosecute any suit in the court for any sum of money, not greater than 20*l.*, which may be due to him for wages or piece-work, or for work as a servant, in the same manner as if he were of full age.

47. *Jurisdiction of court in cases of partnership and intestacy.*—That the jurisdiction of the court shall extend to the recovery of any demand not exceeding the sum of 20*l.*, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part part of the amount of a distributive share under an intestacy, or of any legacy under a will.

48. *Executors may sue and be sued.*—That it shall be lawful for any executor or administrator to sue and be sued in the court, in like manner as if he were a party in his own right, and judgment and execution shall be such as in the like case would be given or issued in any superior court.

49. *No privilege allowed.*—That no privilege, except as hereinafter excepted, shall be allowed to any person to exempt him from the jurisdiction of the court.

50. *One of several persons liable may be sued.*—That where any plaintiff shall have any demand recoverable in the court against two or more persons jointly answerable, it shall be sufficient if any of such persons be served with process, and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable may not have been served or sued, or may not be within the jurisdiction of the court; and every such person against whom judgment shall have been obtained under this act, and who shall have satisfied such judgment, shall be entitled to demand and recover in the court contribution from any other person jointly liable with him.

51. *Judge alone to determine all questions unless a jury be summoned.*—That the judge of the court shall be the sole judge in all actions brought in the court, and shall determine all questions, as well of fact as of law, unless a jury shall be summoned as hereinafter mentioned: and no suitors shall in any case be summoned to hold or have any jurisdiction in the said court.

#### JURY.

52. *Actions may be tried by jury when parties require it.*—That in all actions where the amount claimed shall exceed 5*l.* it shall be lawful for the plaintiff or defendant to require a jury to be summoned to try the said action; and in all cases where the amount claimed shall not exceed 5*l.*, it shall be lawful for the judge, in his discretion, on the application of either of the parties, to order that such action be tried by a jury; and in every case such jury shall be summoned according to the provisions hereinafter contained: Provided always, that the party requiring a jury to be summoned shall give to the clerk of the court, or leave at his office, such notice thereof as shall be directed by the rules made for regulating the practice of the court as hereinafter provided; and the said clerk shall cause notice of such demand of a jury, made either by the plaintiff or defendant, to be communicated to the other party to the said action, either by post or by causing the same to be delivered at his usual

place of abode or business, but it shall not be necessary for either party to prove on the trial that such notice was communicated to the other party by the clerk.

53. *Party requiring a jury to make a deposit.*—That every party requiring any jury to be summoned shall at the time of giving the said notice, and before he shall be entitled to have such jury summoned, pay to the clerk of the court the sum of 5*s.* for payment of the jury, and such sum shall be considered as costs in the cause unless otherwise ordered by the judge.

54. *Who shall be jurors.*—That the secondaries of the said city shall cause to be delivered to the clerk of the court a list of persons qualified and liable to serve as jurors in the courts of assize and nisi prius for the said city, within fourteen days from the first day of January in each year, each list containing only the names of persons residing within the jurisdiction of the court, for which list the said secondaries shall be entitled to receive out of the general fund of the court a fee after the rate of 2*d.* for every folio of 72 words; and whenever a jury shall be required under the provisions of this act the clerk of the court shall cause so many of the persons named in the list as shall be needed, in the opinion of the judge, to be summoned to attend the court at a time and place to be mentioned in the summons, and shall administer or cause to be administered to such of them as shall be impanelled to try any cause or causes an oath to give true verdicts according to the evidence; and the persons so summoned shall attend at the court at the time mentioned in the summons, and in default of attendance shall forfeit such sum of money as the judge shall direct, not being more than 5*l.* for each default; and the delivery of such summons to the person whose attendance is required on such jury, or delivery thereof to his wife or servant, or any inmate at his usual place of abode, trading, or dealing, shall be deemed good service: Provided always, that no person shall be summoned or compelled to serve on such jury more than twice within one year, or who shall have been summoned and shall have attended upon any jury at the assizes, or any Court of Nisi Prius, or at the Central Criminal Court, within six calendar months next before the delivery of such summons.

55. *As to the number of jurymen to be impanelled.*—That whenever there are any jury trials, five jurymen shall be impanelled and sworn, as occasion shall require, to give their verdicts in the causes which shall be brought before them in the court, and, being once sworn, shall not need to be re-sworn in each trial, and either of the parties to any such cause shall be entitled to his lawful challenge against all or any of the said jurors, in like manner as he would be entitled in any superior court; and the jurymen so sworn shall be required to give an unanimous verdict.

#### TRIAL, ARBITRATION, RULES, &c.

56. *Proceedings on hearing the plaint.*—That

on the day in that behalf named in the summons the plaintiff shall appear, and thereupon the defendant shall be required to appear to answer such plaint, and on answer being made in court the judge shall proceed in a summary way to try the cause and give judgment, without further pleading or formal joinder of issue.

57. *Evidence to be confined to cause of action in summons.*—That no evidence shall be given by the plaintiff, on the trial of any such cause as aforesaid, of any demand or cause of action, except such as shall be stated in the summons hereby directed to be issued.

58. *Notices of special defences given to the clerk, who shall communicate the same to the plaintiff.*—That no defendant in the court be allowed to set off any debt or demand claimed or recoverable by him from the plaintiff, or to set up by way of defence and to claim and have the benefit of infancy, coverture, or any Statute of Limitations, or of his discharge under any statute relating to bankrupts, or any Act for the Relief of Insolvent Debtors, without the consent of the plaintiff, unless such notice thereof as shall be directed by the rules made for regulating the practice of the court shall have been given to the clerk of the court; and in every case in which the practice of the court shall require such notice to be given the clerk of the court shall, as soon as conveniently may be after receiving such notice, communicate the same to the plaintiff by the post, or by causing the same to be delivered at his usual place of abode or business; but it shall not be necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the clerk.

59. *Suits may be settled by arbitration.*—That the judge may in any case, with the consent of both parties to the suit, order the same, with or without other matters within the jurisdiction of the court in dispute between such parties, to be referred to arbitration, to such person or persons, and in such manner and on such terms, as he shall think reasonable and just, and such reference shall not be revocable by either party, except by consent of the judge; and the award of the arbitrator or arbitrators or umpire shall be entered as the judgment in the cause, and shall be as binding and effectual to all intents as if given by the judge, provided that the judge may, if he think fit, on application to him at the first court held after the expiration of one week after the entry of such award, set aside any such award so given as aforesaid, or may, with the consent of both parties aforesaid, revoke the reference, or order another reference to be made in the manner aforesaid.

60. *Forms of procedure in courts to be framed by the recorder, &c.*—That the recorder for the time being of the said city, the common serjeant for the time being of the said city, and the judge for the time being of the Sheriffs' Court shall have power, and they are hereby required from time to time to make and issue all the general rules for regulating the practice

and proceedings of the court, and also to frame forms for every proceeding in the court for which they shall think it necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the clerk of the court, and from time to time to alter any such rules or forms, and the rules so made and the forms so framed shall be observed and used in the court; and in any case not expressly provided for herein or by the said rules, the general principles of practice in the superior courts of common law may be adopted and applied, at the discretion of the judge, to actions and proceedings in the court under the provisions of this act.

61. *Forms of procedure to be approved by the chief justices.*—That no such general rules and forms shall be in force until the same shall have been approved by the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, or one of them.

62. *Proceedings if plaintiff does not appear or prove his case.*—That if upon the day of the return of any summons, or at any continuation or adjournment of the court or of the cause for which the said summons shall have been issued, the plaintiff shall not appear, the cause shall be struck out; and if he shall appear, but shall not make proof of his demand to the satisfaction of the court, it shall be lawful for the judge to nonsuit the plaintiff, or to give judgment for the defendant; and in either case, where the defendant shall appear and shall not admit the demand, to award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as the judge in his discretion shall think fit, and such sum shall be recoverable from the plaintiff by any such ways and means as any debt or damage ordered to be paid by the same court can be recovered: Provided always, that if the plaintiff shall not appear when called upon, and the defendant or some one duly authorized on his behalf shall appear and admit the cause of action to the full amount claimed, and pay the fees payable in the first instance by the plaintiff, the court, if it shall think fit, may proceed to give judgment as if the plaintiff had appeared.

63. *Proceedings if defendant does not appear.*—That if on the day so named in the summons, or at any continuation or adjournment of the court or cause in which the summons was issued, the defendant shall not appear, or sufficiently excuse his absence, or shall neglect to answer when called in court, the judge, upon due proof of service of the summons, may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended: Provided always, that the judge, in any such case, at the same or any subsequent court, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new trial of the cause upon such terms (if any) as to payment

of costs, giving security for debt or costs, or such other terms, as he may think fit, on sufficient cause shown to him for that purpose.

**64. Judge may make orders for granting time.**

—That the judge may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit; and also may from time to time adjourn any court, or the hearing or further hearing of any cause, in such manner as to the judge may seem fit.

**65. Defendant may pay money into court as a satisfaction for demand. Notice of such payment to be given to plaintiff.**—That it shall be lawful for the defendant in any action brought under this act, within such time as shall be directed by the rules made for regulating the practice of the court, to pay into court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff, up to the time of such payment; and notice of such payment shall be communicated by the clerk of the court to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business; and the said sum of money shall be paid to the plaintiff; but if he shall elect to proceed, and if the plaintiff shall recover no further sum in the action than shall have been so paid into court, the plaintiff shall pay to the defendant the costs incurred by him in the said action, after such payment; and such costs shall be settled by the court and an order shall therefore be made by the court for the payment of such costs by the plaintiff.

#### EVIDENCE AND WITNESSES.

**66. Parties and others may be examined.**—

That on the hearing or trial of any action, or on any other proceeding in the court, the parties thereto, their wives, and all other persons may be examined, either on behalf of the plaintiff or defendant, upon oath or solemn affirmation, in those cases in which persons are by law allowed to make affirmation instead of taking an oath, to be administered by the proper officer of the court.

**67. Persons giving false evidence guilty of perjury.**—That every person who in any examination upon oath or solemn affirmation, before any judge of the court, in any action or proceeding therein under the provisions of this act, shall wilfully and corruptly give false evidence shall be deemed guilty of perjury.

**68. Summonses to witnesses.**—That either of the parties to the suit or any other proceeding in the court may obtain, at the office of the clerk of the court, summonses to witnesses, to be served by one of the bailiffs of the court, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control; and in any such summons any number of names may be inserted.

**69. Penalty on witnesses neglecting summonses.**

—That every person, on whom any such summons shall have been served, either personally or in such other manner as shall be directed by

the general rules or practice of the court, and to whom at the same time payment or a tender of payment of his expenses shall have been made, on such scale of allowance as shall be from time to time settled by the general rules of practice of the court, and who shall refuse or neglect, without sufficient cause, to appear or to produce any books, papers, or writings required by such summons to be produced, and also every person present in court who shall be required to give evidence, and who shall refuse to be sworn and give evidence, shall forfeit and pay such fine, not exceeding 10*l.*, as the judge shall set on him; and the whole or any such fine, in the discretion of the judge, after deducting the costs, shall be applicable toward indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form part of the general fund of the said court.

**70. Fines how to be enforced and accounted for.**—The payment of any fine imposed by the court may be enforced, upon the order of the judge, in like manner as payment of any debt adjudged in the court, and shall be accounted for as herein provided.

**71. Costs to abide the event of the action.**—That all the costs of any action or proceeding in the court, not herein otherwise provided for, shall be paid by or apportioned between the parties in such manner as the judge shall think fit, and in default of any special direction shall abide the event of the action, and execution may issue for the recovery of any such costs in like manner as for any debt adjudged in the court.

**72. Judgments how far final.**—That every order and judgment of the court, except as herein provided, shall be final and conclusive between the parties; but the judge shall have power to nonsuit the plaintiff in every case in which satisfactory proof shall not be given to him entitling either the plaintiff or the defendant to the judgment of the court, and shall also in every case whatever have the power, if he shall think fit, to order a new trial to be had, upon such terms as he shall think reasonable, and in the mean time to stay the proceedings.

#### JURISDICTION OF SUPERIOR COURTS.

**73. No actions to be removed into superior courts, but on certain conditions.**—That no plaint entered in the court under the provisions of this act, or by this act directed to be continued therein, shall be removed or removable from the court into her Majesty's Superior Courts of Record by any writ or process, unless the debt or damage claimed shall exceed 5*l.*, and then only by leave of a judge of one of the said superior courts, in cases which shall appear to the judge fit to be tried in one of the superior courts, and upon such terms as to payment of costs, giving security for debt or costs, or such other terms, as he shall think fit.

**74. No actions to be removed into the Lord Mayor's Court, or the Court of Hustings, or to be heard before the Lord Mayor, by writ or process.**

36.—That no plaint entered in the court under the provisions of this act, or by this act directed to be continued therein, shall in any case be removed or removable from the court by writ of *Levetur querela*, or any other writ or process, into the court of our lady the Queen holden before the Lord Mayor and aldermen in the chamber of the Guildhall of the city of London, or into the Court of Hustings in the city of London, nor be liable to be re-heard or examined by the Lord Mayor of the city of London by markment or other customary process.

#### PRACTITIONERS, FEES, &c.

75. *Who may appear for the party in the court.*—That no person shall be entitled to appear for any other party to any proceeding in the court unless he be an attorney of one of her Majesty's Superior Courts of Record or a barrister-at-law, instructed by such attorney on behalf of the party, or, by leave of the judge, any other person allowed by the judge to appear instead of such party; but no barrister, attorney, or other person, except by leave of the judge, shall be entitled to be heard to argue any question, as counsel for any other person, in any proceeding in the court; and no person not being an attorney admitted to one of her Majesty's Superior Courts of Record shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the court; and the judge shall have power, and he is hereby required, from time to time, to settle and regulate the fees to be taken by barristers-at-law and attorneys practising in the court, and in what cases the expense or employing barristers and attorneys shall be allowed on taxation of costs.

#### JUDGMENT AND EXECUTION.

76. *Court may make orders for payments by instalments.*—That the judge may make orders concerning the time or times, and by what instalments, any debt or damages or costs for which judgment shall be obtained in the court shall be paid, and all such monies shall be paid into court, unless the judge shall otherwise direct.

77. *Cross judgments.*—That if there shall be cross judgments between the parties execution shall be taken out by that party only who shall have obtained judgment for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the remainder shall be entered, as well as satisfaction on the judgment for the smaller sum; and if both sums shall be equal, satisfaction shall be entered upon both judgments.

78. *Court may award execution against goods.*—That whenever the judge shall, under the provisions of this act, have made an order for the payment of money, the amount shall be recoverable, in case of default or failure of payment thereof forthwith, or at the time or times, and in the manner thereby directed, by execution against the goods and chattels of the party against whom such order shall be made; and the clerk of the court, at the request of the

party prosecuting such order, shall issue under the seal of the court a writ of *fi. facias* as a warrant of execution to the chief bailiff of the court, who by such warrant shall be empowered to levy or cause to be levied, by distress and sale of the goods and chattels of such party, such sum of money as shall be so ordered, wheresoever they may be found within the city of London or the liberties thereof, and also the costs of the execution; and all constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant.

79. *Execution not to issue till after default in payment of some instalment, and then it may issue for the whole sum due.*—That if the judge shall have made any order for the payment of any sum of money by instalments, execution upon such order shall not issue against the party until after default in payment of some instalment according to such order; and execution or successive executions may then issue for the whole of the said sum of money and costs then remaining unpaid, or for such portion thereof as the judge shall order, either at the time of making the original order or at any subsequent time, under the seal of the court.

80. *What goods, &c. may be taken in execution.*—That every bailiff or officer executing any process of execution issuing out of the court against the goods and chattels of any person may, by virtue thereof, seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person and his family, and the tools and implements of his trade to the value of 5*l.*, which shall to that extent be protected from such seizure), and may also seize and take any money or bank notes (whether of the Bank of England or any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, belonging to any such person against whom any such execution shall have issued as aforesaid.

81. *Securities seized to be held by bailiff.*—That the bailiff executing any such process of execution shall hold any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money which shall have been so seized or taken as aforesaid as a security or securities for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised, for the benefit of the plaintiff; and the plaintiff may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured or made payable thereby, when the time of payment thereof shall have arrived.

#### FRAUD.

82. *Parties having obtained an unsatisfied judgment may obtain a summons on charge of fraud.*—That it shall be lawful for any party who has obtained a judgment or order in the court, or under the said recited act repealed by this act, for the payment of any debt or damages or costs, which judgment or order

shall not be satisfied, to obtain a summons from any County Court established under or by virtue of the before-mentioned Act for the more easy Recovery of Small Debts and Demands in England and Wales, within the limits of which any other party shall then dwell or carry on his business, and in like manner it shall be lawful for any party who has obtained a judgment or order in any County Court established under or by virtue of the before-mentioned Act for the more easy Recovery of Small Debts and Demands, or under or by virtue of any act repealed by such act, for the payment of any debt or damages, or costs, which judgment or order shall not be satisfied, to obtain a summons from the Sheriffs' Court, in case the party against whom such judgment or order shall have been obtained shall then dwell or carry on his business within the city of London or the liberties thereof; such summons to be in such form as shall be directed by the rules made for regulating the practice of such County Courts, or, as the case may be, of the Sheriffs' Court, and to be served personally upon the person to whom it is directed, requiring him to appear at such time as shall be directed by the said rules to answer such things as are named in such summons: and if he shall appear in pursuance of such summons, he may be examined upon oath touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which is the subject of the action in which judgment has been obtained against him, and as to the means and expectation he then had, and as to the property and means he still hath of discharging the said debt or damages, or liability, and as to the disposal he may have made of any property; and the person obtaining such summons as aforesaid, and all other witnesses whom the judge shall think requisite, may be examined upon oath touching the inquiries authorized to be made as aforesaid; and the costs of such summons and of all proceedings thereon shall be deemed costs in the cause.

83. *Commitment for frauds, &c.*—That if the party so summoned shall not attend as required by such summons, and shall not allege a sufficient excuse for not attending, or shall, if attending, refuse to be sworn, or to disclose any of the things aforesaid, or if he shall not make answer touching the same to the satisfaction of the judge, or if it shall appear to such judge, either by the examination of the party or by any other evidence, that such party, if a defendant, in incurring the debt or liability which is the subject of the action in which judgment has been obtained, has obtained credit from the plaintiff under false pretences, or by means of fraud or breach of trust, or has wilfully contracted such debt or liability without having had at the same time a reasonable expectation of being able to pay or discharge the same, or shall have made or caused to be made any gift, delivery, or transfer of any property, or shall have charged, removed, or concealed the same with intent to defraud his creditors or any of

them, or if it shall appear to the satisfaction of the judge of the court that the party so summoned has then or has had since the judgment obtained against him sufficient means and ability to pay the debt or damages, or costs, so recovered against him, either altogether or by any instalment or instalments which the court in which the judgment was obtained shall have ordered, and if he shall refuse or neglect to pay the same as shall have been so ordered, or as shall be ordered pursuant to the power herein-after provided, it shall be lawful for such judge, if he shall think fit, to order that any such party may be committed to the common gaol or house of correction of the county, district, or place in which the party summoned is resident, or to any prison which is provided as the prison of the court, for any period not exceeding forty days.

84. *Power of judge to rescind or alter orders.* That it shall be lawful for the judge of any court before whom such summons shall be heard, if he shall think fit, whether or not he shall make any order for the committal of the defendant, to rescind or alter any order that shall have been previously made against any defendant so summoned before him, for the payment, by instalments or otherwise, of any debt or damages recovered, and to make any further or other order, either for the payment of the whole of such debt or damages and costs forthwith, or by any instalments, or in any other manner, as such judge may think reasonable and just.

85. *Power to examine and commit at hearing of the cause.*—That in every case where the defendant in any suit brought or continued in the court, or, as the case may be, in any County Court, shall have been personally served with the summons to appear, or shall personally appear at the trial of the same, the judge at the hearing of the cause, or at any adjournment thereof, if judgment shall be given against the defendant, shall have the same power and authority of examining the defendant and the plaintiff, and other parties, touching the several things hereinbefore mentioned, and of committing the defendant to prison, and of making an order, as he might have and exercise under the provisions hereinbefore contained in case the plaintiff had obtained a summons for that purpose after the judgment obtained as hereinbefore mentioned.

86. *Mode of issuing and executing warrants of commitment.*—That whenever any order of commitment shall have been made as aforesaid, the clerk of the court shall issue, under the seal of the court, a warrant of commitment directed to one of the bailiffs of the court, or, as the case may require, of any County Court, who by such warrant shall be empowered to take the body of the person against whom such order shall be made; and in like manner, whenever any order of commitment shall have been made by the judge of any County Court, the clerk of such court may issue, under the seal of the court, a warrant of commitment directed to one of the bailiffs of the Sheriff's



Court, who by such warrant shall be empowered to take the body of the person against whom such order shall be made; and all constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant; and the gaoler or keeper of every gaol, house of correction, and prison mentioned in any such order shall be bound to receive and keep the defendant therein until discharged under the provisions of this act or otherwise by due course of law; and no protection, order, or certificate granted by any Court of Bankruptcy or for the Relief of Insolvent Debtors shall be available to discharge any defendant from any commitment under such last-mentioned order.

87. *Imprisonment not to operate as a satisfaction for the debt, &c.*—That no imprisonment under this act shall in anywise operate as a satisfaction or extinguishment of the debt or other cause of action on which a judgment has been obtained, or protect the defendant from being anew summoned and imprisoned for any new fraud or other default rendering him liable to be imprisoned under this act, or deprive the plaintiff of any right to take out execution against the goods and chattels of the defendant, in the same manner as if such imprisonment had not taken place.

#### EXECUTION.

88. *How execution may be had out of the jurisdiction of the court.*—That in all cases where a warrant of execution shall have issued against the goods and chattels of any party, or an order for his commitment shall have been made under this act, and such party or his goods and chattels shall be out of the jurisdiction of the court, it shall be lawful for the chief bailiff of the court to send such warrant of execution or of commitment to the clerk of any County Court constituted under the said before-mentioned Act for the more easy Recovery of Small Debts and Demands in England within the jurisdiction of which such party or his goods and chattels shall then be or be believed to be, with a warrant thereto annexed, under the hand of the chief bailiff and seal of the court holden under the provisions of this act, requiring execution of the same; and the clerk of the County Court to which the same shall be sent shall seal or stamp the same with the seal of his court, and issue the same to the chief bailiff of his court; and thereupon such bailiff shall be authorized and required to act in all respects as if the original warrant of execution or commitment had been directed to him by the court of which he is the high bailiff, and shall, within such time as shall be specified in the rules of practice, return to the chief bailiff of the court holden under the provisions of this act what he shall have done in the execution of such process; and in case a levy shall have been made shall, within such time as shall be specified in the rules of practice, pay over all monies received in pursuance of the warrant to the chief bailiff of the court holden under the provisions of this act, retaining the fees for

execution of the process; and where any order of commitment shall have been made, and the person apprehended, he shall be forthwith conveyed in custody of the bailiff or officer apprehending him to the gaol or house of correction or other prison of the court within the jurisdiction of which he shall have been apprehended, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged under the provisions of this act; and all constables and other peace officers shall be aiding and assisting, within their respective districts, in the execution of such warrant: Provided always, that if such party or his goods and chattels shall not be within the jurisdiction of any County Court constituted under the said before-mentioned act, it shall be lawful for the bailiff of the court holden under the provisions of this act to apply to any justice of the peace acting for the county or place in which such party or his goods and chattels shall happen to be, and upon such officer producing to such justice such warrant, and making oath (which oath such justice is hereby empowered to administer) that the same has been duly issued out of the court, and that the person or goods and chattels (as the case may be) of such person is or are not to be found within the jurisdiction of the court, but is or are believed by such officer to be within the county or place where such justice acts, such justice shall sign his name on the back of such warrant, and thereupon such bailiff shall have power to take the body or goods and chattels of such person (as the case may be) wheresoever the same shall be found within such county or place, and deal forthwith, in like manner as if the same had been taken within the jurisdiction of the court: and all constables and other peace officers are hereby required to be aiding, within their respective jurisdictions, in the execution of the warrant so endorsed as aforesaid.

89. *How execution out of any County Court may be had within the jurisdiction of this court.*—That in all cases where a warrant of execution shall have issued against the goods and chattels of any party, or an order for his commitment shall have been made under the before-mentioned act for the more easy recovery of small debts and demands in England, and such party or his goods and chattels shall be or be believed to be within the city of London or the liberties thereof, it shall be lawful for the high bailiff of the County Court from which such warrant of execution shall have issued, or by which such order of commitment shall have been made, to send such warrant or order to the chief bailiff of the Sheriffs' Court, with a warrant thereunto annexed under the hand of the high bailiff and the seal of the County Court from which the original warrant or order issued requiring execution of the same, and the clerk of the Sheriffs' Court shall seal or stamp the same with the seal of the court holden under the provisions of this act, and shall issue the same to the chief bailiff of the court; and thereupon such chief bailiff shall be authorized and required to act in all respects



as if the original warrant of execution or order of commitment had been directed to him by the court holden under the authority of this act, and shall, within such time as shall be specified in the rules of practice, return to the high bailiff of the County Court from which the same originally issued what he shall have done in the execution of such process: and in case a levy shall have been made shall, within such time as shall be specified in the rules of practice, pay over all monies received in pursuance of the warrant to the high bailiff of the court from which the same shall have originally issued, retaining the fees for execution of the process; and where any order of commitment shall have been made, and the person apprehended mentioned in such order shall be within the city of London or the liberties thereof, he shall be forthwith conveyed in the custody of the bailiff or officer apprehending him to some gaol, house of correction, or other prison within the city of London or the liberties thereof, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged under the provisions of the before-mentioned act for the recovery of small debts and demands in England.

90. *Power to judge to suspend execution in certain cases.*—That if it shall at any time appear to the satisfaction of the judge, by the oath or affirmation of any person, or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, it shall be lawful for the judge, in his discretion, to suspend or stay any judgment, order, or execution given, made, or issued in such action, for such time and on such terms as the judge shall think fit, and so from time to time, until it shall appear, by the like proof as aforesaid, that such temporary cause of disability has ceased.

91. *Regulating the sale of goods taken in execution.*—That no sale of any goods which shall be taken in execution as aforesaid shall be made until after the end of five days at least next following the day on which such goods shall have been so taken, unless such goods be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken; and until such sale the goods shall be deposited by the bailiff in some fit place, or they may remain in the custody of a fit person, approved by the chief bailiff, to be put in possession by the bailiff; and it shall be lawful for the chief bailiff, from time to time, as he shall think proper, to appoint such and so many persons for keeping possession, and so many sworn brokers and appraisers, for the purpose of selling or valuing any goods, chattels, or effects taken in execution under this act, as shall appear to him to be necessary, and to direct security to be taken from each of them for such sum and in such manner as he shall think fit, for the faithful performance of their duties without injury or oppression; and the judge or chief bailiff may dismiss any person, broker, or appraiser

so appointed; and no goods taken in execution under this act shall be sold for the purpose of satisfying the warrant of execution, except by one of the brokers or appraisers so appointed, and the brokers or appraisers so appointed shall be entitled to have out of the produce of the goods so distrained or sold sixpence in the pound on the value of the goods for the appraisement thereof, whether by one broker or more, over and above the stamp duty, and for advertisements, catalogues, sale and commission, and delivery of goods, one shilling in the pound on the net produce of the sale.

92. *As to the liability of goods taken in execution under 8 Anne, c. 17. Landlords may claim certain rents in arrear. Bailiffs making levies may distrain for rent and costs. In case of replevins.* 57 G. 3, c. 93.—That so much of an act passed in the 8 Anne, c. 17, intituled "An Act for the better Security of Rents, and to prevent Frauds committed by Tenants," as relates to the liability of goods taken by virtue of any execution shall not be deemed to apply to goods taken in execution under the process of the court; but the landlord of any tenement in which any such goods shall be so taken shall be entitled, by any writing under his hand, or under the hand of his agent, to be delivered to the bailiff or officer making the levy (which writing shall state the terms of holding, and the rent payable for the same), to claim any rent in arrear then due to him, not exceeding the rent of four weeks where the tenement is let by the week, and not exceeding the rent accruing due in two terms of payment where the tenement is let for any other term less than a year, and not exceeding in any case the rent accruing due in one year; and in case of any such claim being so made, the bailiff or officer making the levy shall distrain as well for the amount of the rent so claimed, and the costs of such additional distress, as for the amount of money and costs for which the warrant of execution issued under this act, and shall not proceed to sell the same, or any part thereof, within five days next after such distress taken; and if any replevin be made of the goods so taken, such of the goods shall be sold under the execution as shall satisfy the money and costs for which the warrant of execution issued, and the costs of the sale; and the overplus of such sale (if any) and also the residue of the goods shall be returned, as in other cases of distress for rent and replevin thereof; and for every such additional distress for rent in arrear the bailiff of the court shall be entitled to have, as the costs of the distress, instead of the fees allowed by this act for making such distress, and keeping possession thereof, the fees allowed by an act passed in the 57 G. 3, c. 93, intituled "An Act to regulate the Costs of Distresses levied for the payment of small rents."

93. *No execution shall be stayed by writ of error.*—That no judgment or execution shall be stayed, delayed, or reversed upon or by any writ of error or supersedeas thereon to be sued for the reversing of any judgment given in the court.

94. *Execution to be superseded on payment of debt and costs.*—That in or upon every warrant of execution issued against the goods and chattels of any person whomsoever the clerk of the court shall cause to be inserted or endorsed the sum of money and costs adjudged, with the sums allowed by this act, as increased costs for the execution of such warrant; and if the party against whom such execution shall be issued shall, before an actual sale of the goods and chattels, pay or cause to be paid or tendered unto the clerk of the court, or of any other court out of which such warrant of execution has issued, or to the bailiff holding the warrant of execution, such sum of money and costs as aforesaid, or such part thereof as the person entitled thereunto shall agree to accept, in full of his debt or damages and costs, together with the fees herein directed to be paid, the execution shall be superseded, and the goods and chattels of the said party shall be discharged and set at liberty.

95. *Debtor to be discharged from custody upon payment of debt and costs.*—That any person imprisoned under this act who shall have paid or satisfied the debt or demand, or the instalments thereof payable, and costs, remaining due at the time of the order of imprisonment being made, together with the costs of obtaining such order, and all subsequent costs, shall be discharged out of custody, upon the certificate of such payment or satisfaction, signed by the clerk of the court, by leave of the judge of the court.

#### MISCELLANEOUS PROVISIONS.

96. *Minutes of proceedings to be kept, and when certified by the clerk to be evidence.*—That the clerk of the court shall cause a note of all plaints and summonses, and of all orders, and of all judgments and executions and returns thereto; and of all fines, and of all other proceedings of the court, to be fairly entered from time to time in a book belonging to the court, which shall be kept at the office of the court; and such entries in the said book, or a copy thereof, bearing the seal of the court and purporting to be signed and certified as a true copy by the clerk of the court, shall at all times be admitted in all courts and places whatsoever as evidence of such entries and of the proceeding referred to by such entry or entries, and of the regularity of such proceeding without any further proof.

97. *Suitors' money unclaimed in six years to go to general fund.*

98. *Power of committal for contempt.*—That if any person shall wilfully insult the judge, or any juror, or any bailiff, clerk, or officer of the court for the time being during his sitting or attendance in court, or in going to or returning from the court, or shall wilfully interrupt the proceedings of the court, or otherwise misbehave in court, it shall be lawful for any bailiff or officer of the court, with or without the assistance of any other person, by the order of the judge, to take such offender into custody, and detain him until the rising of the court; and the judge shall be empowered, if he shall think fit, by a warrant under his hand and sealed with

the seal of the court, to commit any such offender to any prison to which he has power to commit offenders under this act for any time not exceeding seven days, or to impose upon any such offender a fine not exceeding 5*l.* for every such offence, and in default of payment thereof to commit the offender to any such prison as aforesaid for any time not exceeding seven days, unless the said fine be sooner paid.

99. *Penalty for assaulting bailiffs, or rescuing goods taken in execution.*—That if any officer or bailiff of the court shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any goods levied under process of the court, the person so offending shall be liable to a fine not exceeding 5*l.*, to be recovered by order of the court, or before a justice of the peace as hereinafter provided; and it shall be lawful for the bailiff of the court, or any peace officer, in any such case to take the offender into custody (with or without warrant) and bring him before such court or justice accordingly.

100. *Bailiffs made answerable for escapes, and neglect to levy execution.*—That in case any bailiff of the court who shall be employed to levy any execution against goods and chattels shall, by neglect or connivance or omission, lose the opportunity of levying any such execution, then, upon complaint of the party aggrieved by reason of such neglect, connivance, or omission (and the fact alleged being proved to the satisfaction of the court, on the oath of any credible witness), the judge shall order such bailiff to pay such damages as it shall appear that the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution issued; and the bailiff shall be liable thereto, and upon demand made thereof, and on his refusal so to pay and satisfy the same, payment thereof shall be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the court.

101. *Remedies against and penalties on bailiffs and other officers for misconduct.*—That if any clerk, bailiff, or officer of the court, acting under colour or pretence of the process of the court, shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied by him under the authority of this act, it shall be lawful for the judge to inquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties, in like manner as the attendance of witnesses in any case may be enforced, and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs, as he shall think just, and also, if he shall think fit, to impose such fine upon the clerk, bailiff, or officer, not exceeding 10*l.* for each offence, as he shall deem adequate; and in default of payment of any money so ordered to be paid, payment of the same may be enforced by such ways and means

as are herein provided for enforcing a judgment recovered in the court.

102. *Penalty on officers taking fees besides those allowed.*—That every treasurer, clerk, bailiff, or other officer employed in putting this act or any of the powers thereof in execution, who shall wilfully and corruptly exact, take, or accept any fee or reward whatsoever, other than and except such fees as are or shall be appointed and allowed respectively as aforesaid, for or on account of anything done or to be done by virtue of this act, or on any account whatsoever relative to putting this act into execution, shall, upon proof thereof before the said court, be for ever incapable of serving or being employed under this act in any office of profit or emolument, and shall also be liable for damages as herein provided.

103. *Claims as to goods taken in execution to be adjudicated in court.*—That if any claim shall be made to or in respect of any goods or chattels taken in execution under the process of the court, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued, it shall be lawful for the clerk of the court, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, to issue a summons, calling before the court as well the party issuing such process as the party making such claim; and thereupon any action which shall have been brought in any of her Majesty's Superior Courts of Record, or in any local or inferior court, in respect of such claim shall be stayed; and the court in which such action shall have been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the court holden under the provisions of this act; and the judge of the court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit; and such order shall be enforced in like manner as any order made in any suit brought in such court.

#### ACTIONS OF REPLEVIN.

104. *Actions of replevin may be brought in the court.*—That all actions of replevin in cases of distress for rent in arrear or damage faisant may be brought in the court without writ, and shall not be removable into any other court unless the rent or damage in respect of which the distress shall have been taken shall be more than 20*l.*, or unless the title to any corporeal or incorporeal hereditament or leasehold premises, or to any toll, market, fair or other franchise, or to the whole or any part of the distress, shall be in question in any such action.

105. *How actions of replevin may be removed.*—That in case either party to any such action of replevin shall declare to the court that the

title to any corporeal or incorporeal hereditament, or to any leasehold premises, or to any toll, market, fair, or franchise, or to the whole or any part of the distress, is in question, or that the rent or damage in respect of which the distress shall have been taken is more than the sum of 20*l.*, and shall become bound, with two sufficient sureties to be approved by the clerk of the court, in such sums as to the judge shall seem reasonable, regard being had to the nature of the claim and the alleged value or amount of the property in dispute, or of the rent or damage, to prosecute the suit with effect and without delay, and to prove before the court by which such suit shall be tried that such title as aforesaid is in dispute between the parties, or that there was ground for believing that the said rent or damage was more than 20*l.*, then, and not otherwise, the action may be removed before any court competent to try the same.

#### POSSESSION OF SMALL TENEMENTS.

106. *Possession of small tenements may be recovered by plaint in the court.*—If tenant, &c., neglect to appear, or refuse to give possession, judge may, on proof of service of summons, issue a warrant to enforce the same.—That when and so soon as the term and interest of the tenant of any house, land, or other corporeal hereditament, where the value of the premises or the rent payable in respect of such tenancy did not exceed the sum of 50*l.* by the year, and upon which no fine shall have been paid, shall have ended, or shall have been duly determined by a legal notice to quit, and such tenant, or if such tenant do not actually occupy the premises or occupy only a part thereof, any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises or of such part thereof respectively, it shall be lawful for the landlord or his agent to enter a plaint in the court, and thereupon a summons shall issue to the person so neglecting or refusing; and if the tenant or occupier shall not thereupon appear at the time and place appointed and show cause to the contrary, and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof of which he is then in possession, to the said landlord or his agent, it shall be lawful for such landlord or agent to give to the court proof of the holding and of the end or other determination of the tenancy, with the time or manner thereof, and where the title of the landlord has accrued since the letting of the premises, the right by which he claims the possession; and upon proof of the service of the summons, and of the neglect or refusal of the tenant or occupier, as the case may be, it shall be lawful for the judge to issue a warrant under the seal of the court to any bailiff of the court, requiring and authorizing him within a period to be therein named, not less than seven or more than ten clear days from the date of such warrant, to give possession of the premises to such landlord or agent; and such warrant

any goods and chattels taken in execution of shall be a sufficient warrant to the said bailiff to enter upon the premises, with such assistants as he shall deem necessary, and to give possession accordingly: Provided always, that entry upon any such warrant shall not be made on a Sunday, Good Friday, or Christmas-day, or at any time except between the hours of nine in the morning and four in the afternoon; provided also, that nothing herein contained shall be deemed to protect any person by whom any such warrant shall be sued out of the court from any action which may be brought against him by any such tenant or occupier for or in respect of such entry and taking possession, where such person had not, at the time of suing out the same as aforesaid, lawful right to the possession of the same premises.

107. *The manner in which such summons shall be served.*—That such summons as last aforesaid may be served either personally or by leaving the same with some person being in and apparently residing at the place of abode of the person or persons so holding over as aforesaid, provided that if the person or persons so holding over or any or either of them cannot be found, and the place of abode of such person or persons shall either not be known or admission thereto cannot be obtained for serving such summons, the posting of the said summons on some conspicuous part of the premises so held over shall be deemed to be good service upon such person or persons respectively.

108. *Judges, clerks, &c., not liable to actions on account of proceedings taken.*—That it shall not be lawful to bring any action or prosecution against the judge, or against the clerk of the court by whom such warrant as aforesaid shall have been issued, or against any bailiff or other person by whom such warrant may be executed or summons affixed, for issuing such warrant or executing the same respectively, or affixing such summons, by reason that the person by whom the same shall be sued out had not lawful right to the possession of the premises.

109. *Where landlord has a lawful title, he shall not be deemed a trespasser by reason of irregularity.*—That where the landlord, at the time of applying for such warrant as aforesaid, had lawful right to the possession of the premises, or of the part thereof so held over as aforesaid, neither the said landlord nor his agent, nor any other person acting in his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this act, but the party aggrieved may, if he think fit, bring an action on the case for such irregularity or informality, in which the damage alleged to be sustained thereby shall be specially laid, and may recover full satisfaction for such special damage, with costs of suit, provided that if the special damage so laid be not proved the defendant shall be entitled to a verdict, and that if proved, but assessed by the jury at any sum not exceeding the sum of 5s., the plaintiff shall

recover no more costs than damages, unless the judge before whom the trial shall have been holden shall certify that, in his opinion, full costs ought to be allowed.

110. *How execution of warrant of possession may be stayed.*—That in every case in which the person by whom any such warrant shall be sued out of the court had not at the time of suing out the same lawful right to the possession of the premises, the suing out of any such warrant as last aforesaid shall be deemed a trespass by him against the tenant or occupier of the premises, although no entry shall be made by virtue of the warrant; and in case any such tenant or occupier will become bound with two sufficient sureties, to be approved by the clerk of the court, in such sum as to the judge shall seem reasonable, regard being had to the value of the premises and to the probable cost of such action, to sue the person by whom such warrant was sued out with effect and without delay, and to pay all the costs of the proceeding in such action in case a verdict shall pass for the defendant, or the plaintiff shall discontinue or not prosecute his action, or become nonsuit therein, execution upon the warrant shall be stayed until judgment shall have been given in such action of trespass; and if upon the trial of such action of trespass a verdict shall pass for the plaintiff, such verdict and judgment thereupon shall supersede the said warrant.

111. *Proceedings on the bond for staying warrant of possession, &c.*—That every bond given on the removal of any action out of the court, or upon staying the execution of any such warrant of possession as aforesaid, or on moving for a new trial, or to set aside a verdict, judgment, or nonsuit, shall be made to the other party to the action at the costs of such other party, and shall be approved by the judge and attested under the seal of the court; and if the bond so taken be forfeited, or if, upon the proceeding for securing which such bond was given, the judge before whom such proceeding shall be had shall not certify upon the record in court that the condition of the bond hath been fulfilled, the party to whom the bond shall have been so made may bring an action of debt, and recover thereon: Provided always, that the court in which such action as last aforesaid shall be brought may, by a rule of court, give such relief to the parties liable upon such bond as may be agreeable to justice and reason, and such rule shall have the nature and effect of a defeazance to such bond.

#### JURISDICTION OF SUPERIOR COURTS.

112. *Concurrent jurisdiction with superior courts.*—That all actions and proceedings which before the passing of this act might have been brought in any of her Majesty's Superior Courts of Record, where the plaintiff dwells more than twenty miles from the defendant, or where any officer of the court holden under the provisions of this act shall be a party, except in respect of any claim to

the process of the court, or the proceeds or value thereof, may be brought and determined in any such superior court, at the election of the party suing or proceeding, as if this act had not been passed.

113. *As to actions brought for small debts in superior courts.*—That if any action shall be commenced after the passing of this act in any of her Majesty's Superior Courts of Record, for any cause other than those lastly hereinbefore specified, for which a plaintiff might have been entered in the court holden under the provisions of this act, and a verdict shall be found for the plaintiff for a sum not more than £20 if the said action is founded on contract, or less than £5 if it be founded on tort, the said plaintiff shall have judgment to recover such sum only, and no costs; and if a verdict shall not be found for the plaintiff, the defendant shall be entitled to his costs as between attorney and client, unless in either case the judge who shall try the cause shall certify on the back of the record that the action was fit to be brought in such superior court.\*

#### PENALTIES.

114. *Penalties and costs to be recovered before a justice, and levied by distress.*—That all penalties, fines, and forfeitures by this act inflicted or authorized to be imposed (the manner of recovering and applying whereof is not hereby otherwise particularly directed) shall, upon proof before any justice of the peace having jurisdiction within the county or place where the offender shall reside or be or the offence shall be committed, either by the confession of the party offending, or by the oath of any credible witness, be levied, with the costs attending the summons and conviction, by distress and sale of the goods and chattels of the party offending, by warrant under the hand of any such justice, and the overplus (if any), after such penalties, fines, and forfeitures, and the charges of such distress and sale, are deducted, shall be returned, upon demand, unto the owner of such goods and chattels.

115. In default of security offender may be detained till return of warrant of distress.

116. In default of distress offender may be committed.

117. Penalties not otherwise applied to be paid into the general fund.

118. *Justices may proceed by summons in the recovery of penalties.*—That in all cases in which by this act any penalty or forfeiture is made recoverable before a justice of the peace it shall be lawful for such justice to summon before him the party complained against, and on such summons to hear and determine the matter of such complaint, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing shall have been exhibited before him; and all such proceedings by summons, without information in writing,

shall be as valid and effectual to all intents and purposes as if an information in writing had been exhibited.

119. Form of conviction.

120. Proceedings not invalid for want of form.

121. Distress not unlawful for want of form.

122. *Limitation of actions for proceedings in execution of this act.*—That all actions and prosecutions to be commenced against any person for any thing done in pursuance of this act shall be laid and tried in the county where the fact was committed, and shall be commenced within three calendar months after the fact committed, and not afterwards or otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if after action brought a sufficient sum of money shall have been paid into court, with costs, by or on behalf of the defendant.

123. *Provision for the protection of officers of the court.*—That if any person shall bring any suit in any of her Majesty's Superior Courts of Record, in respect of any grievance committed by any clerk, bailiff, or officer in the court holden under the provisions of this act, under colour or pretence of the process of the said court, and the jury, upon the trial of the action, shall not find greater damages for the plaintiff than the sum of 20*l.*, no costs shall be awarded to the plaintiff in such action, unless the judge shall certify in court, upon the back of the record, that the action was fit to be brought in such superior court.

124. *Act not to affect Court of Hustings, or Lord Mayor's Court.*—That nothing in this act contained shall be construed to alter or affect the Court of Hustings in the said city of London, or the court of our lady the Queen holden before the Lord Mayor and aldermen in the chamber of the Guildhall of the city of London, or to take away, lessen, or diminish the powers and jurisdictions of the said courts, or either of them.

125. Interpretation of act.

126. *Expenses of act.*—That the costs, charges, and expenses attending or incident to the applying for, obtaining, and passing this act shall be paid and defrayed by, from, and out of the monies which have from time to time been paid into the chamber of London on account of the business transacted in the said Court of Requests hereby abolished, or which shall be paid to the treasurer of the court to be holden under this act.

127. That this act shall commence and take effect on the 29th day of September next after the passing hereof.

128. That this act shall be a public act, and shall be judicially taken notice of as such.

[The Schedule of Fees will be printed in the next number.]

## REPORT ON LEGAL EDUCATION.

## FOREIGN SCHOOLS OF LAW.

HAVING submitted to our readers the state of Legal Education,—or rather the want of it—in this country, as set forth in the Report from the Select Committee of the House of Commons, we proceed to extract the statements and observations of the Committee with regard to Foreign Schools of Law:—

The committee having, as they state, met with but little assistance from home institutions, thought it right to make such inquiries abroad, as by enabling them to judge more correctly of the present state of Legal Education in other countries, and its effects on the profession and population generally, might permit them to suggest effective means for its greater extension and improvement in ours. In that view they examined Mr. Moriarty, who from having graduated in the University of Dublin, and having studied at some of the principal universities of Germany, at Heidelberg, Bonn, Berlin, &c. and recently occupied, for three years, a chair himself in an important institution, the Royal Academy of Trade in Berlin, seemed well qualified, as well from his studies of English as of foreign law, to furnish all necessary information and useful suggestions on the subject. Though specifically bearing on the course pursued at the University of Berlin, yet as the German Universities are all constituted and conducted very nearly on the same principle, his evidence may be considered as applicable to all.

“The faculty of law or of jurisprudence is one of the faculties (generally the second,) of every German university without exception. It presents the largest opportunity and means of legal study to every student who wishes to avail himself of it, whether unprofessional or professional. This, it may be alleged, is the case in some at least of our own institutions, such as the University of London; but there is this essential difference between this country and Germany, that no situation in which legal knowledge, of whatever description, is considered requisite is open to any candidate who has not gone through the prescribed course of study fitted to attain that knowledge, and is not provided with a certificate attesting such course, and the having passed through two examinations required in proof of his having mastered the several subjects which such course comprises. This applies not merely to judge, barrister, solicitor, notary, &c., of every grade, to those classes, in fine, which in this country are considered as strictly professional, but to every official in the civil service, of whatever

rank, from the first minister of state to the lowest employe. It is the leading principle which regulates not only the entire judicial and official organization of the country, but, as must at once be perceived, the whole educational system designed as preparation for it. Hence the three characteristic features of her university system are: 1. A high scale of preparatory study, previous to being even admitted to any of the faculty courses. 2. The immense number of professors, and minute subdivision of subject and labour. 3. The compulsory character of attendance on lectures and examinations, and the reality and stringency given to them by the mode in which both are carried out. The object purposed to be attained is thorough and extensive knowledge of theory, at the period when theory in all sciences is best studied, leaving to after exercise, for which every day's occupation furnishes opportunity, the application and development of this theory in practice. In this view the state sees on one side that the best provision be made for instruction, both in quantity and quality, but requires in return that the person who applies for it shall be well prepared to receive it, and that when he is occupied in receiving it he shall be *bonâ fide* so occupied, and not by a compliance with mere form lose or escape from the reality.

“The legal student, previous to his being admitted into the university, is required to produce a certificate of his having passed in the gymnasium, or public school, where he has studied No. 2, or second degree of merit at the examination, which takes place on leaving it, usually called the *Arbiturienten Examen*. This examination, which is intended to test whether he be ripe for entrance and attendance in the university, is very extensive and rigorous, fully equal to the examination in the second undergraduate year at an English university: it embraces a very ample course of classics, and requires proof that the pupil is in a position to write Latin free at least from all grammatical error, &c., &c. The examination immediately preliminary to entering the university is rather of a cursory nature, the *Arbiturienten Examen* just mentioned being considered sufficient warranty for his reception. The legal student then continues for three years at the university; but even in Prussia he is not necessarily restricted to a Prussian university, with the exception of one half year, which half year must be devoted to the study of the Prussian code. His attendance on the lectures at the several universities, and his assiduity, must, however, be attested at the close of each half year by a certificate from the professor whose lectures he has attended. The lectures are either compulsory, or of a general nature, which latter being desirable only, but not absolutely necessary, are left to his discretion. The certificate of attendance is required only for the former. The student is not restricted to any particular order of study during the three years; he may commence with any, and in fact, as many as he pleases, as there is no examination till the end of his



career. The selection is often determined by the university at which he happens to be, or by the more or less eminence of the professors who occupy the different chairs, but this in no wise exempts from any branch or portion of the required course, which continues the same in whatever order it may be taken. The student usually begins with an outline of the science, or what is termed the "Encyclopædia" (Methodologie,) common to all other branches of study, and though not obligatory, of considerable advantage, and intended for the student's own convenience. The "Naturrecht" (Natural Law, or the Philosophy of Jurisprudence) then follows. It takes four hours a week (two hours each day); a peculiarity confined to law lectures, which, treating of subjects more involved, and which might suffer by being treated piecemeal, demanded this exception from the general rule of one hour only. These lectures illustrate the abstract principles of jurisprudence, by frequent reference to the practice of different countries, and are well calculated to give the student a general idea at least of its philosophy. These four lectures a week continue for about half a year, and generally amount to about 100. The next course comprised the "Institutes," or the "History and Antiquities of Roman Law," to which are devoted six hours a week for half a year also. The Institutes are followed by the "Pandects," a subject considered of great importance in Germany, to which there are given not less than 10 hours weekly. The fourth course embraces the "Erbrecht," (or the Law of Inheritance,) requiring three hours weekly. Then follows "the History of the Law of German States" and "Forensic History," (or the History of the Laws of Germany, as they have grown up into their present form through the different modifications of time and the various institutions of the country,) and to which are devoted four hours weekly. Next succeeds the German "Privatrecht," (or Private Law,) exclusively of German origin, eight hours weekly. Next "Ecclesiastical Law," a very important object, studied at present very deeply, and the knowledge of which is tested by a very strict examination, many of the foundations, charitable and scholastic, being of ecclesiastical origin, and many even of the existing principalities having arisen from their having been converted from bishops' sees to their present secular form. This course occupies four hours weekly. The next is a course on the "Criminal Prozess" (or Criminal Procedure) generally of Germany, not so much on the principles involving criminal prosecution as on its mode; that is, not so much on the matter as the form of the prosecution, to which are given four hours a week. This is followed by the common Prussian "Criminal Prozess," (or Criminal Procedure,) almost exclusively of Roman Law, or at least governed by the principles of Roman Law, to which four hours are weekly. The next is "Judicial and Practice" generally, which is intended to familiarize the student with the discharge of

the different offices to which he may be subsequently called, one or two hours weekly. These courses on Procedure are succeeded by a course on the "Landrecht," or the strictly Prussian Criminal Code, which takes five hours weekly. Then follows a course on "International Law," three hours weekly; and for each of the students as intend devoting themselves to Rhenish Jurisprudence and Practice, a course or courses on the "Rhenish Civil Procedure," "the Constitution of the Rhenish Judicature," and "the Code Napoleon," attendance on which is required four hours; on the course of the Civil Procedure, and on that of the others, probably three, four, or even five hours a week are indispensable, but yet considered scarcely adequate. At the University of Berlin that branch is, of course, badly represented, a student devoting himself to it would prefer studying it at some Rhenish university, at Bonn, for instance. There are thus, in all, 13 courses of compulsory or obligatory lectures for the student in law, involving, if confined to one year, 62 lectures of one, or 31 of two hours per week; but as he is at liberty to divide the whole over three years, it may be considered as averaging about 20 lectures of one, or 10 of two, per week, or about four hours in continuous legal study per day during the *semestre* or half year; not excessive if applied to such studies exclusively. But in addition to these compulsory lectures, there are others of a subsidiary character, provided for such as are desirous of taking advantage of them. Several such courses are given by those who, without holding the rank of professor, extraordinary or ordinary, or receiving any salary from the government or the university, have acquired the "Venia docendi," or privilege of delivering lectures at the university, and of receiving fees from the pupils attending them. Many of these lectures are developments of portions of the compulsory lectures, synchronous frequently with them, and in aid of those sections which the ordinary lecturer could not extend, consistently with the more general character of his courses, and in justice to the objects of all his listeners. There are thus three lecturers on the course of Privatrecht, two of whom more specially treat of the two great departments, "Lehn" and "Handelsrecht," (or Feudal and Commercial Law). All these courses hitherto mentioned, whether compulsory or optional, are of a strictly legal character, and common to all legal students; but there is another class of lectures, to which we shall later have to advert, and which, in addition to the legal, the candidate who wishes to qualify for official employment must also attend. In fact, almost all the subjects of great importance, not only in this but in all the other faculties, have two or more professors treating on the same subject concurrently. Each course generally occupies a *semestre* or half a year, so as to admit a very extensive treatment of each subject; the lectures are given continuously, but do not appear to be preceded or followed by examinations. Lately there has been a wish



expressed by the government that the lecturers should introduce "*Disputoria*," or the examination *viâ voce* of the student; but this, though to a certain degree acted on, has not been successful, and has not been hitherto pursued to any great extent at any of the German universities. The want of such aids is however abundantly supplied by other circumstances in the organization of these institutions. The subjects are treated not only, as already observed, by ordinary, extraordinary, and voluntary (or "*Privat-Dozenten*") lecturers, but also are further elucidated by private instruction. In fact, under the designation of "public," open to the public at large; "private," open to the university; and "most private," confined to private or chamber-class instruction, the pupil has lectures and teaching of every description in abundance if he thinks proper to avail himself of it. It is also to be observed, that the compulsory lectures, especially, are far from being matters of form; they are diligently and attentively frequented, though usually lasting, as has been observed, for two hours, and are almost invariably taken down in writing by each student; the subjects of which they treat being of a nature to require a thorough familiarity with each detail, and being of importance to him up to the end of his career."

At the expiration of three years, at any of the universities, the student in law sends in his certificate of assiduity and attendance to some "*Ober Gericht*," that is, to some superior law tribunal, with an application to be admitted to practise thereat, after having previously submitted to an examination as to his legal acquirements. If the certificate of attendance and assiduity be found satisfactory, the president of the tribunal directs a commission, consisting of two examiners, to issue, and then the student is examined with such others as may have applied at the same period.

"This examination is rather of a superficial character. It is confined almost exclusively to an inquiry into the student's proficiency in the principles of Roman Law, and to abstract questions of law in general; such as, for instance, the leading principles on which a criminal case should be founded, questions as to conferring the right of the administration of justice to one branch of the community in preference to another, &c., &c.; in short, to the general philosophy of jurisprudence. No very minute inquisition into his knowledge of practical details, particularly of the strictly Prussian law, is at this stage required; this is reserved for his second examination. Should he be found so far competent, he is then appointed "*Auscultator*," or *Hearer*, and in that capacity is received into the tribunal. In this tribunal he must serve for one year at least, and gratuitously; and in order to insure this, previously to his admission he must produce a certificate from his parents or guardians that they are

willing and able to support him during the three or four, or as may be more, preparatory years previous to his passing his second or final examination, from which time forth a certain moral responsibility for his future provision devolves upon the state. During this probationary year as "*Auscultator*" he is placed in different departments of the court, in the registry, in the accountant or book-keeping department, and so on; and he must also, with the assistance of a "*Co-Referent*," institute himself, and conduct to an issue, two or three real cases occurring within the jurisdiction of this *Gericht*, and requiring its decision; but he has, in the performance of this duty, the assistance of an elder counsellor, who, if he shall distinctly disapprove of any part of his procedure, is at liberty to reject it, and substitute his own; a moral guarantee is thus provided that sufficient care will be taken to teach accuracy, at least, in the proceedings. The whole is then submitted to the decision of the court itself, and if the deficiency of the candidate or probationer be very manifest, he is, of course, not permitted to proceed further until he shall have made good this. He is, in addition to this, sent to the "*Unter-Gericht*," or inferior court, in order to learn the details of the proceeding in that also; the object of this probationary year being to familiarise him with all the details of Prussian procedure. Such is the second stage of his legal education: He now proceeds to the third. If the cases which he has conducted, in his capacity of *Auscultator*, be considered creditable, and his intelligence and diligence, on the whole, be shown to the satisfaction of the president of the court, he is, after a year elapses, at liberty to apply to become a "*Referendarius*;" but before his application can be admitted, a second examination must take place, of a more searching character as regards the peculiarly Prussian forms of procedure and law. From that moment, that is, from the passing of such examination, he is considered as being qualified for the discharge of any of the legal functions of an inferior order to which he may be hereafter deputed. He is, as it were, licensed by the state, though not as yet in the service of the state. He is under its control, but still not exclusively in the employment of the government; he is at liberty to conduct the affairs of clients and of persons applying to him, whereas the other class is not; their functions are limited not to private practice, but to such as may be assigned to them by the court to which they are respectively attached. The distinction in the profession is not, as with us, between the advocate, barrister or pleader on the one side, and the solicitor or attorney on the other, but between the state servant and the free practitioner, a natural result of their forms of procedure; as the inquiries are not public, and oral debate is not allowed, the profession does not branch off into the recipient of instructions from the client (or the solicitor,) and the forensic advocate (or barrister); they are identified and form but one body. But there is a marked difference be-

tween the two classes; the free practitioner is eligible only to such situations as "Notary," and "Justiz Commissarius," which is the nearest approximation to our solicitor. To attain this grade, it is necessary, as already observed, to pass an examination at the gymnasium; a three years' lecture course in the university; a one year's probationary course as Auscultator, and a two years' subsequent probationary course as Referendarius, but not to pass through the searching "state examination." He, however, who wishes to advance farther, and to become eligible to the service of the state, or to official situation, must now proceed to the fourth stage. After having served two years as "Referendarius," and gratuitously, at some superior court, he is now at liberty, but not before, to apply to pass the "Staats Examen," or State Examination. The State Examination is of extraordinary severity; indeed so severe, that it might not be too much to say that 30 per cent. of those who attempt it, and of those who have been moderately assiduous, fail. This examination can only be passed in Berlin, and before the permanent commission which sits there for this purpose. It embraces the most extensive course not only of law, but also of all branches of information that may be subsequently required in the discharge of the executive duties of government, such as the system of police, and the general principles of all subjects connected with mining, woods and forests, the theory and operations of trade, statistics of population, &c., &c.; in fact, it is coextensive with the "Camerialia," a course which comprises the study of whatever can become legitimately the object of government functions. It is at this stage, therefore, the jurist is at liberty to branch off, and either select what is called "Staat Dienst," or the state administrative career, or to remain simply an advocate or barrister. The course to be followed in the former case will later come under consideration. Should he determine on the latter, on passing this examination, he applies for liberty to act as "Anwalt," in which case he conducts the cases of clients, but without possessing any judicial character beyond the fact that all officers connected with the law in Prussia, and in most of the other states, are regarded as officers of the crown to a certain degree. But, in addition to the qualifications required for this inferior grade of the profession, for the higher a much larger body of knowledge is demanded. In other words, for the mere admission to the bar in Germany, in addition to the four years at the Gymnasium, three years' university course, five examinations, and three years' practice and exercise, all legal, are essential. To appreciate this fully, it is not to be measured by our ordinary English estimate. The first or preliminary examination on leaving the Gymnasium, is intended to discover whether the skill and knowledge of the candidate warrant his entering the university, or whether it would not be more advisable that he should enter on some commercial or other pursuit. This test, so far from being like our matricula-

tion examinations, is stringent and comprehensive. It ensures a well-grounded knowledge of an extensive course, comprised in five classes, from the lowest, which is quite elementary (children enter at 12 and 13 years of age), to the highest or Tertia. The pupil is required to possess an intimate acquaintance with the ancient classical authors, such a familiarity with the Latin language as may give him a facility of expressing himself with ease and correctness in it; the elements of arithmetic, algebra, and geometry, the rudiments of chemistry, botany, and natural history, a knowledge of geography and history, but especially of the geography and history of his own country; a knowledge of modern languages (in the fourth class French, and in the third English); the first principles of political economy, the statistics of commerce and trade, together with its history, &c. In no case is this examination to be dispensed with. The candidate, without passing it (even though his education had been conducted in private,) cannot obtain the rank of Auscultator, which is the lowest in the legal profession. Next comes the preliminary examination at the university. Thirdly, the examination as Auscultator, to test the candidate's knowledge in the general theory of law, and acquaintance with the principles of Roman law; fourthly, the examination to entitle to the rank of Referendarius, to test his accurate and intimate acquaintance with all the forms of Prussian procedure; and fifthly, the wide and very stringent state examination, to prove his knowledge in every branch of science which may be connected with legal or administrative functions.

[To be continued in our next No.]

## NOTICES OF NEW BOOKS.

*A Treatise on the Law of the New County Courts, compiled from the Statute of the 9 & 10 Vict. c. 95, and the Common Law applicable thereto.* By JOSEPH MOSELEY, Esq., Barrister-at-Law. Part II. London: Stevens & Norton, 1847. Pp. 435, clxiv.

THIS treatise shows considerable learning and research on so much of the common law as may be applicable to cases coming before the New County Courts. There are various editions of the Small Debts Act, with useful notes and criticisms; but Mr. Moseley has not limited his labours to mere annotations on the act: he has enlarged his view to the rules and principles of law, as they may be, or ought to be, administered in these courts.

We apprehend, however, that much of this learning and research will be thrown away. The cases wherein Mr. Moseley's book will be practically useful, must necessarily, we fear, be "few and far between." The plaints are to be

decided in a summary way, and for the most part will be disposed of with small regard to legal form or ceremony.

Nevertheless, Mr. Moseley is entitled to the thanks of those who may practise in these courts. Here they will find collected in a convenient space whatever they may require in the management of the cases in which the principles and practice of the Superior Courts may be brought to bear in the administration of justice in the County Courts.

The work is well arranged—treating of

1st. Jurisdiction. 2nd. Plaints. 3rd. Process. 4th. Trial. 5th. Execution. 6th. Commitments. 7th. Recovery of Possession. 8th. Replevins. To which are added, the Rules of Practice and Forms for the County Courts; and the Orders in Council, Division of Counties, Districts, and Court Towns.

Mr. Moseley, on ushering in this Second Part of his work, after apologizing for the long delay that has occurred in its appearance, observes:—

That he has kept closely to the plan adopted in the First Part. From the decisions that have been already given by the learned judges of the New County Courts, he conceives that the main feature in the plan which he has adopted namely, “the application, except where it is forbidden or is inconsistent, of the general principles and practice of the common law to the jurisdiction, process, and other proceedings of the New County Courts, as prescribed by the statute, and rules made in pursuance thereof, is the proper and lawful method of administering justice therein, and the only safe mode of insuring a sound and uniform course of law and practice.”

We earnestly hope that “sound and uniform law and practice” will ultimately be attained. Mr. Moseley’s book has the merit of assisting in this object “so devoutly to be wished.”

#### PROGRESS OF SOCIETIES OF ATTORNEYS AND SOLICITORS.

In reference to the Metropolitan and Provincial Law Association, we have been reminded that a few years ago a similar society was projected by a few London solicitors, under the name of “The Legal Protective Association,” and which afterwards sought to associate with it some of the country solicitors, and then took the title of “The Metropolitan and Provincial Legal Association.” It does not appear that the existing societies in town or country were consulted on the plan, or their leading members invited to join “The Legal

Protective,” and in fact it was evidently the ambition of its founders to establish a new and independent, if not a rival, association. During the first year, a few hundred subscribers enrolled their names, but most of them soon fell off, and the Legal Protective ceased to exist.

Looking over the list of the committee of management of the new association, we find it composed entirely of members selected from the several existing societies in town and country. There seems, therefore, to be no doubt that it has been sanctioned by, and is proceeding with the friendly concurrence of, the other law societies. There is, therefore, good ground for trusting that both the ends to be attained, and the means of securing them, will be well considered and judiciously pursued.

Some years ago, there were three metropolitan law societies:—the old Law Society, instituted in 1739, of which the late Mr. Kaye was Prolocutor, and Mr. Flexney, Secretary;—the Metropolitan Law Society, instituted in 1819, of which Mr. Leake, M. P., was President, and Mr. Anderton, Secretary;—and the Northern Agents’ Society, of which Mr. Charles Clarke, of the firm of Clarke, Richards, and Medcalf, was Secretary. The two former societies had precisely the same objects in view: the promotion of fair and honourable practice, and the maintenance of the just interests of the profession. The latter had a similar design, but was limited to the London agency houses. Then there were about thirty or forty law societies, and a few law libraries, in different parts of the country, also composed of attorneys and solicitors. None of these societies appear to have exceeded 300 subscribers,—a very small number compared with the general body,—not, in the whole, forming one-tenth of the profession. Then came the Incorporated Law Society, comprising the attorneys, solicitors, and proctors of Great Britain and Ireland. At present it numbers upwards of 1,100 London, and nearly 300 country, members, with a few in Ireland and Scotland.

We mention these facts for the information of those who have favoured us with some remarks and suggestions on the constitution and objects of the new association, and are glad that we are enabled from time to time to put our readers in possession of all the circumstances which bear on the subject.

With the exception of the Incorporated Law Society, the New Association seems to have been founded upon a more extensive plan than

any former institution,—being designed to comprehend both town and country solicitors. We understand that the number of members already amounts to nearly one thousand. Considering the short time which has elapsed since the commencement of the association, and recollecting the general supineness of the profession on all personal matters, this number is a large one; but it ought to be much greater, in order to effect the various important objects set forth in the address of the committee of management. We therefore renew our exhortation to such of our readers as have not already transmitted their names, to forward them to the secretary without delay.

## MUTUAL INSURANCE SOCIETIES.

### NOMINATION.

A CORRESPONDENT at Rochester inquires of our subscribers, whether any case has occurred or any decision be pronounced by which a nomination under a mutual insurance society has been declared valid and sufficient to supersede an assignment in the ordinary form?

The nomination is prepared under 10 Geo. 4, c. 56, as amended by 4 & 5 W. 4, c. 50, and 3 & 4 Vict. c. 73, s. 3. The nomination runs thus, viz:—

No. 3. Apportionment of Nominee. Not revocable except with consent of nominee. (This may be used as a collateral security for money.)

To the

Directors of the National Provident Institution. No. of policy class

I of in the county of do by right of an assurance made by me with the National Provident Institution, for the sum of pounds, to be paid at my death, nominate and appoint of in the county of his executors, administrators, or assigns, to receive the said sum and all other benefits and emoluments to arise by virtue of such assurance when due, and I do hereby agree, that this appointment shall not be disturbed or revoked without the consent in writing of the aforesaid nominee so specially appointed, his executors, administrators, or assigns.

Witness my hand this day of.

184

Witnesses:

of  
of

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

*Chancery Court.*

*Agon, July 28, 1847.*

MOTION TO DISMISS.—ABATEMENT.—RE-  
vivor.

The court will allow the plaintiff in an abated

suit to dismiss the bill without costs, with the consent of the personal representatives of the defendant.

In this suit, which had become abated by the death of the sole defendant, the plaintiff moved, that the bill might be dismissed without costs, the administratrix of the defendant appearing and consenting.

Mr. Rogers for the motion.

Lord Langdale at first expressed some doubt whether the motion could be made without removing the suit, but ultimately made the order.

*Vice-Chancellor of England.*

*Wellesley v. Wellesley, July 23, 1847.*

FEME COVERT.—APPLICATION TO SUE IN FORMA PAUPERIS.—NEXT FRIEND.

An application by a married woman to sue in forma pauperis, and without a next friend; granted, it appearing, that there was no one ready to act as such next friend.

In this case a petition was presented by the Countess of Mornington, praying that she might be permitted to sue in forma pauperis, and without the intervention of a next friend; the affidavit in support of the petition stated, that she was in a destitute condition, and that there was no one to act as her next friend.

Mr. Rolt appeared for the petition.

The Vice-Chancellor made the order.

*Vice-Chancellor Knight Bruce.*

*Denning v. Henderson. Jan. 23, 1847.*

PAYMENT OF PURCHASE-MONEY INTO COURT.—ACCEPTANCE OF TITLE.

A purchaser will not be allowed to pay his purchase money into court without accepting the title, notwithstanding that all parties to the suit consent.

Bates moved, with the consent of all parties in the cause, that the purchaser might be at liberty to pay his purchase money into court, without accepting the title.

The Vice-Chancellor. Even with consent it is not, according to the unanimous opinion of the registrars, allowable to pay purchase money into court unless the title be accepted.

*Eschequer.*

*Bousfield v. Edge. Trinity Term, 8th June, 1847.*

PLEADING.—JUDGMENT.—SPECIAL PLEA.

To a declaration containing a count on a bill of exchange, and a count on an account stated, the defendant, who was under terms of pleading issuable, pleaded, "that he did not indorse the bill," without confining the plea in terms to the first count. To the other count he pleaded non assumpsit. The plaintiff having signed judgment, on the ground that the first plea was pleaded to the whole declaration, and therefore non assumpsit, the court set aside the judgment as irregular.

THIS was a rule, calling on the plaintiff to show cause why the interlocutory judgment signed in this case should not be set aside for irregularity. The declaration contained a count by indorsee against indorser of a bill of exchange, and also a count for money due on an account stated. The defendant, who was under terms of pleading issuable, pleaded as follows:—"And the defendant by — his attorney, says, that he did not indorse the said bill of exchange in manner and form as in the said first count alleged:" and to the last count *non assumpsit*. The plaintiff signed judgment, on the ground that the first plea was a plea to the whole declaration: whereupon the present rule was obtained, against which.

*Prentice* showed cause. The first plea is not confined in terms to the first count, and must therefore be taken to be pleaded to the whole declaration, but as that plea affords no answer to the count on the account stated, it cannot be considered an issuable plea: *Parratt v. Goddard*, 1 Dow. N. S. 874; *Pulney v. Swan*, 2 M. & W. 72. Where a defendant is under terms of pleading issuably, he ought not to plead so as to invite a demurrer. *Hughes v. Pool*, 6 Scott, N. R. 959; *Sewell v. Dale*, 8 Dow. P. C. 309. The plea applying to both counts is not in conformity with the judge's order to plead several matters.

The *Attorney-General* and *Thompson*, in support of the rule. Since the new rules, pleas need not have any formal commencement, and the termination of this plea shows that it is pleaded to the first count only. *Vere v. Goldsborough*, 1 Scott, 265, is an express authority, that in a case like the present, the plaintiff is not entitled to sign judgment, and that if the plea is defective, it is only ground of special demurrer: *Worley v. Harrison*, 12 Adol. & E. 669, is also in point.

*Pollock*, C. B. The rule must be absolute to set aside the judgment.

*Alderson*, B. Can it be said that a plea which is only bad on special demurrer is not a plea to the merits?

Rule absolute.

## ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

### Common Law Courts.

#### LAW OF ARBITRATION.

[IN order to afford space in the present number for the long and important act which comes into operation on the 29th September, for the Recovery of Small Debts in the City of London, this short section of the Digest, relating to the Law of Arbitration, has been taken rather out of its order.]

#### ARBITRATOR'S AUTHORITY.

1. *Reference before verdict.*—*Entry of judgment.*—*Finality of award.*—An arbitrator to whom a cause is referred after issue, but before proceeding to trial and without the verdict of a

jury has no authority to order a judgment to be entered in the action; but if the award be, independently of such order, final and conclusive, the court will not set it aside, because it also contains an order to enter up judgment; but will only set aside that part of it which directs the judgment to be entered, and the judgment, if any, signed thereupon.

Where, therefore, after issue joined in ejectment but before verdict, the matters at issue in the action, together with all claims in respect of mesne profits and all matters in difference between the parties, and the costs of the action, and of the reference, were referred by a judge's order; and the award directed judgment in the action to be entered for the plaintiff with one shilling damages, and that the plaintiff should recover under the same judgment, a plot of land, specifically described; and that the defendant should pay 12*l.* as mesne profits; and the plaintiff taxed costs in the action, and a specified portion of the costs of the reference and award; the court set aside a judgment signed by the plaintiff under the award, but refused to set aside the award itself, as independently of that part which directed the judgment, it sufficiently decided on the matters referred. *Doe dem. Body v. Cox*, 32 L. O. 189.

2. *Surplusage.*—*Setting aside award.*—"The matters at issue in the action, together with all claims in respect of the mesne profit of the lands in question, and all matters in difference between the parties, and of the costs of this action, and of the reference to be made pursuant to this order," were, after issue joined in an action of ejectment, referred by a judge's order to arbitration. The arbitrator awarded, "that judgment for the plaintiff be entered in the said action, with 1*s.* damages, and that the plaintiff do recover, under the same judgment, a plot or parcel of land, situate," &c., [describing it] "and I do further award," &c., "that the said defendant shall pay the sum of 12*l.* as and for the mesne profits of the said land, and the plaintiff's costs of the said action to be taxed by the proper officer, and the sum of 2*l.* 10*s.* in part of the said plaintiff's costs of the reference; and I do award," &c., "that except as aforesaid, each party shall pay his own costs of the said reference, and that the costs of this my award shall be paid and borne by them in equal moieties." The plaintiff having signed judgment accordingly: *Held*, 1st, that the arbitrator had exceeded his authority in ordering a judgment to be entered up; and that, therefore, the judgment must be set aside. And 2ndly, that there was no ground for setting aside the award; as that portion of it which related to the judgment must be rejected as surplusage, and a good award would still remain. *Doe d. Body v. Cox*, 4 D. & L. 75.<sup>a</sup>

See *Inconsistent Findings*.

<sup>a</sup> This case was first reported in the *Legal Observer*, and the head-note of the decision is given above. It has been deemed useful to add the subsequent version of *Messrs. Dowling and Lowndes*.

## ARBITRATOR'S INCAPACITY.

See *Incapacity of Arbitrator*.

## AWARD.

See *Inconsistent Findings; Production of Award*.

## ENLARGEMENT OF TIME.

See *Time Enlarged*.

## EXAMINATION OF PLAINTIFF.

A cause having been referred to arbitration, it was expressly stipulated on the part of the defendant that the plaintiff should not be examined as a witness at the reference in support of his claim, and the usual clause in the order of reference giving the arbitrator power to examine the parties to the suit was struck out by consent. At the reference the arbitrator allowed the plaintiff to be called, and heard his evidence, against the consent and express protest of the defendant. A motion being made on the part of the defendant to set aside the award, *Held*, that the arbitrator had exceeded his authority, and that the award was bad. *Held*, also, that the fact of the defendant's counsel having after protest cross-examined the plaintiff and gone into the defendant's case, did not preclude him from moving to set aside the award. *Semle*, That if the defendant had been examined as a witness in support of his case, it would have disqualified him from taking any objection to the admission of the plaintiff as a witness. *Smith v. Sparrow*, 34 L. O. 154.

## INCAPACITY OF ARBITRATOR.

Where a cause was referred by order of *nisi prius*, and the arbitrator, after proceeding with the reference, was incapacitated by mental affliction from making an award: *Held*, that the court had no power to allow judgment to be signed and execution issue, unless the defendant would consent to the appointment of another arbitrator. *Holmes v. Carden*, 33 L. O. 503.

## INCONSISTENT FINDINGS.

*Erection and continuance of nuisance*.—Plaintiff declared in case, alleging that he was entitled to the reversion in a close; that H. had wrongfully and injuriously erected incumbrances thereon; and that defendant wrongfully and injuriously kept and continued the incumbrances so wrongfully erected. Pleas: 1. Not guilty; 2. That H. did not erect incumbrances on the close.

The cause was referred to an arbitrator, who was to direct how the verdict was to be entered on the issues, and to say what should be done between the parties respecting the land or premises. He awarded that the first issue should be entered for the plaintiff, without damages, and the second issue for defendant; and that nothing should be done by the parties respecting the land or premises.

On motion to set aside the award, on the ground that the findings were inconsistent, and that the arbitrator had not awarded what was to be done by the parties.

*Held*, 1. That the first plea put in issue only the continuance of the nuisance by the defendant, and that the finding thereon was therefore not inconsistent with that on the second plea. 2. That the arbitrator was not bound to direct anything to be done.

*Held*, further, that, although the award was bad for not giving damages on the first issue, the objection could not prevail, because the rule *nisi* had not been obtained on that ground. *Grenfell v. Edgcome*, 7 Q. B. 661.

## NUISANCE.

See *Inconsistent Findings*.

## PARTIES, EXAMINATION OF.

See *Examination of Plaintiff*.

## POWER OF ARBITRATOR.

See *Arbitrator's Authority*.

## PRODUCTION OF AWARD.

Where an award is made on a submission by order of reference at *N. P.*, the order of reference does not belong exclusively to either party, but the party holding it holds it for the benefit of both parties, and is bound to produce it in order to its being made a rule of court. *Bottomley v. Buckley*, 4 D. & L. 157.

## PROOF OF SUBMISSION.

*Rule of court*.—A submission to arbitration by agreement written and attested is not sufficiently proved by evidence of a rule making such agreement a rule of court under stat. 9 & 10 W. 3, c. 15, s. 1.

But a judge's order for referring a cause may be proved by such rule of court. *Berney v. Read*, 7 Q. B. 79.

Case cited in the judgment: *Still v. Halford*, 6 M. & W. 664.

## RULE OF COURT.

*Submission*.—*Construction*.—9 & 10 W. 3, c. 15, s. 2.—It is unnecessary that a party desirous of making a submission to an award a rule of court, should apply within the period limited by the 9 & 10 W. 3, c. 15, s. 2, for setting aside the award. Where the notice of motion stated that the application would be made to make the "submission and the award" a rule of court, it was held, that "the submission" alone could be made a rule of court. *Swinerton v. Heming*, 33 L. O. 429.

See *Proof of Submission*.

## SETTING ASIDE AWARD.

*Rule of court*.—Where a submission was by order of reference at *N. P.*, and the defendants in whose favour the award was made had possession of the order of reference, and although requested by the plaintiff, delayed making it a rule of court till it was too late to move within the time ordinarily limited for setting aside an award, the court ordered the defendants either to make the order of reference a rule of court, or to file it with one of the Masters, so as to enable the plaintiff to make it a rule of court, and allowed the plaintiff to move to set the

award aside in a subsequent term, *non pro tunc*. *Bottomley v. Buckley*, 4 D. & L. 157.

*See Arbitrator's Authority.*

#### SUBMISSION.

*See Proof of Submission; Rule of Court; Suit in Equity.*

#### SUIT IN EQUITY.

An agreement to refer, and arbitrators named, and a covenant not to sue, and a power to examine witnesses upon oath, and to make the submission a rule of court, prevent a party from filing a bill with the view of withdrawing the case from the arbitrators. *Dimsdale v. Robertson*, 2 J. & L. 58.

Case cited in the judgment: *Halfhide v. Fenning*, 2 Bro. C. C. 336; 2 Dick. 705.

A party to a suit cannot set up an objection which grew out of his own conduct. *Dimsdale v. Robertson*, 2 J. & L. 58.

Cases cited in the judgment: *Morse v. Merest*, 9 Mod. 56; *Pope v. Lord Duncannon*, 9 Sim. 177.

#### TIME ENLARGED.

*Umpire.*—Two arbitrators were named in a submission to refer; and they, or other the persons appointed in their place, were, before they proceeded, to appoint a third arbitrator; any two of the arbitrators for the time being, might, at any time, or from time to time, make awards or orders, provided the last of such awards should be made before the 1st of July, 1843, or before such other later time as any two of the arbitrators for the time being should appoint; and any two of the arbitrators for the time being, might extend the time for making the last award, whether such time should have previously expired or not. And it was provided, that X. should, as soon as conveniently might be, appoint an umpire; and that if no two of the arbitrators for the time being, should be able to agree in making the award or order concerning any matter which ought to be awarded or ordered by them, such matter should be awarded or ordered by the umpire; and if at any time before the several powers, authorities, covenants, and provisions, in the deed of submission were executed, either of the arbitrators named by the parties should refuse to act, the party whose arbitrator so refused, should appoint another in his place, and if he did not do so within fourteen days, then that the third arbitrator, and if none such, the umpire should appoint such arbitrator. The plaintiff's arbitrator refused to act, and nothing was done in the matter of the reference before the 1st of July, 1843. The plaintiff having, after that day, refused to appoint an arbitrator, the defendant pressed X. to appoint an umpire, who appointed an arbitrator on the part of the plaintiff, and the two arbitrators appointed a third, and then the time was extended by the three arbitrators: *Held*, that the time was duly extended. *Dimsdale v. Robertson*, 2 J. & L. 58.

#### UMPIRE.

*See Time Enlarged.*

## SITTINGS OF THE CITY OF LONDON SMALL DEBT (OR SHERIFFS') COURT.

THE Court of Common Council, on the 9th September, adopted the report of the committee on the City of London Small Debts Act. The report stated that the committee had referred it to Mr. Bullock, the judge of the Sheriffs' Court, to consider and report as to the proposed establishment for the new court and the requisite rules and regulations for its government.

That the committee, having also considered the 23rd clause in the act, whereby the court was authorized to order that the judge, clerk, bailiff, and officers of the court should be paid by salaries instead of fees, recommended the court to direct that the payment of the chief clerk should be by a salary of 500*l.* out of the fees.

The report also stated, that the act came into operation on the 29th of September, and the court must give at least one month's notice of the place where, and of the day or days on which, the Sheriffs' Courts were to be held; and that the committee, after consulting Mr. Bullock, recommended that till such time as the Court of Requests may be in readiness, the said courts be holden in the Guildhall, and that the first be held on *Tuesday*, the 12th of *October*, at 10 o'clock in the forenoon; the second, at 10 o'clock on the 19th; and the third, at 10 o'clock on the 26th of the same month, the judge having advised that the holding of the court once in every week will be sufficient at the commencement.

## THE EDITOR'S LETTER BOX.

\*\*\* We give this week a *double* number, (without any extra charge,) in order to include in it the City of London Small Debts Act, which will come into operation on the 29th instant.

The case mentioned by "*Tacitam*," relating to the validity of a marriage with a deceased wife's sister shall be inquired into. The principle involved in the decision, our correspondent will observe, is undergoing investigation before commissioners, with a view, probably, to the alteration of the law.

The forthcoming new edition of the *Legal Almanac and Year-Book* for 1848, will be much enlarged under the several departments of—1st, The Courts, Commissioners, Officers, &c. 2nd, Parliamentary. 3rd, The Bar. 4th, Attorneys and Solicitors. 5th, General. The *Diary*, also, will be improved in form and extent. New names for the Lists should be sent soon.



# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

---

SATURDAY, SEPTEMBER 25, 1847.

---

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

## FREEDOM OF MEMBERS OF PARLIAMENT FROM ARREST.

THE subject of parliamentary privilege, by which members and ex-members of the legislature are enabled to claim exemption from arrest for debt, has again been brought into notice by the publicity given to the case of one of the honourable members for Finsbury. We are not about to enter into the question of law, which will be found stated in a former number of the present volume of our work,\* for there is no doubt that the House of Commons, which is the only judge of its own privileges, has been hitherto determined to regard the continual freedom of its members from arrest as a right to be maintained with the strictest jealousy. It is vain to speculate upon what the law may be, as it affects those who can put upon it whatever interpretation they please, and who by a resolution of their own can scatter to the winds the most elaborate argument that could be raised as a reason for the curtailment of their privilege. It is true, they might be disposed to pay some attention to precedents, but these precedents are of their own making, and we believe not one can be found which places any limit on the immunity claimed by insolvent legislators from the penalty of imprisonment. There is no doubt that, in the words of Blackstone, the privilege "is now in effect as long as the parliament lasts," for the prorogations seem to be expressly arranged with a view to allowing between each not more than an interval of four score days, which is the

assumed *maximum* of the time during which an indebted M. P., who is not engaged in his legislative duties, may be suffered to elude the grasp of his creditors.

There is something very much beneath the dignity of both Lords and Commons in their entering thus into a sort of manœuvre for the purpose of enabling some two or three of their body to escape the ordinary legal consequences of contracting pecuniary liabilities without the means or intention of meeting them. If our own were a repudiating legislature, like some of those in the United States, we could understand the members claiming for themselves in their private dealings the same glorious privilege of non-payment that is adopted wholesale with reference to the public creditor. When, however, we remember the wealth and integrity of which by far the greatest part of the British Parliament is composed, we cannot help wondering at the tenacity with which it adheres to an invidious distinction, of which in general none but the unprincipled, or those who from their pecuniary embarrassments ought not to take any part in legislation, will desire to avail themselves. The scandal brought upon the House of Commons by some recent instances of evasion of the ordinary laws of debtor and creditor, will damage and degrade the parliament to a far greater extent than it can possibly gain in dignity by the possession of a power which requires a somewhat ignominious occasion for its exercise.

No one can pretend that any dignity is derived from a privilege which enables a member of the House of Commons, without paying a debt, to free himself from the conse-

\* *Ante*, p. 326.

quency of those laws which he has made for pecuniary defaulters, such as himself, but when the penalty comes home to him he repudiates it by virtue of his legislative position. The makers of the laws should be the first to set an example of obedience, except when there is good reason for exemption. But there is avowedly none whatever for permitting a member of parliament to avoid perpetually his pecuniary liabilities. The old ground upon which the privilege formerly rested was, the necessity for members being free to go and return at all times to their duties, and the immunity was supposed to endure as long as might be considered sufficient to give time for travelling backwards and forwards from any part of the kingdom between the sittings. In these days of rapid locomotion, "we need not," as is well observed by the *Times*, "point out the impudent absurdity of eighty days for the going from and coming to parliament. Eighty hours would be far more than the members would be entitled to for any such purposes, even if it were of public benefit that the privilege should be retained."

We should be sorry to see anything so unbecoming as a contest between the public and the legislature on such a matter as the power of the former to make the members of the latter answerable for their just debts. It would never be worth the while of parliament to enter into such a dishonourable, not to say dishonest, struggle, for the advantage of a few individuals of less than doubtful credit, who add nothing to the dignity of the assembly in which they are only enabled to retain their seats by bidding defiance to their creditors. A solicitor, writing to the journal we have already quoted, suggests the possibility of enforcing judgment debts by making a claim on the property furnishing the qualification required by law to be held by a candidate at the time of his election. The 1 & 2 Vict. c. 110, s. 13, certainly enacts, that all judgments entered up shall operate as a charge upon any lands, tenements, &c. that the debtor may possess at the time, or may subsequently acquire; and we are inclined to believe that the experiment proposed would be, at all events, worth a trial. The more satisfactory course would be, however, to avoid the scandal of these seemingly contests between certain members of parliament and their creditors, by the re-constitution of a privilege that has ceased to be useful, and has become positively degrading at last, by

its never being called into practice, except for the most disreputable purposes.

## CONSTRUCTION OF STATUTES.

### ACTION AGAINST A RETURNING OFFICER FOR REFUSING A VOTE.

THE latest number of the published reports of cases determined in the Common Pleas furnishes an instance of an action against a returning officer, for not allowing an elector, whose name was on the register of voters, to vote at an election for a member of parliament.<sup>b</sup> Although the judgment of the court was directed chiefly to questions arising upon the pleadings, the construction to be put upon certain provisions of the statute 6 & 7 Vict. c. 18, s. 81, on which the action was founded, was incidentally discussed, and as the act had not hitherto become the subject of judicial consideration, the views taken by the judges, as to its operation and effect, may at this time interest many of our readers.

The facts upon which the action was brought, as they appear upon the pleadings, were shortly as follow:—A new writ was issued for the borough of Abingdon, Berks, on the 30th June, 1843, upon the occasion of Sir F. Thesiger accepting the office of Attorney-General. The defendant, Mr. Belcher, was mayor of the borough and the returning officer. The plaintiff was a burgess of Abingdon, and his name stood No. 216 in the register of voters. The election took place on the 8th July, when the candidates were Sir F. Thesiger and James Caulfield, Esq. The plaintiff tendered his vote for James Caulfield, Esq., and the questions authorised by the act of parliament (6 & 7 Vict. c. 18, s. 81,) were then put to him and answered in the affirmative. It was objected, however, that the plaintiff was not entitled to vote, as he did not continue to reside in the borough, as required by the proviso annexed to the 79th section, and the defendant entertained this objection, entered into an investigation as to the facts, and finally determined that the plaintiff was not entitled to vote, and declined to reckon the plaintiff's vote amongst those tendered for Mr. Caulfield, but inserted it as a vote tendered and not received. The action was brought under these circumstances, and the declaration contained three counts. The first count

<sup>b</sup> *Pyche v. Belcher*, 3 Com. Bench, 58.

alleged that the defendant wrongfully refused to permit the plaintiff to give his vote, or allow the same to be entered and recorded, and that a Burgess was elected, the plaintiff being so excluded. The second count alleged that the defendant maliciously, &c., instead of entering and recording the plaintiff's vote in the poll books, refused to receive the same, or to admit the same to be entered and recorded, but on the contrary thereof, caused the vote of the plaintiff to be entered in the column of votes tendered in the poll books, and at the close of the poll refused to reckon the plaintiff's vote among the votes given for that candidate, whereby the plaintiff was deprived of the right to vote at that election. The third count alleged, that the defendant, maliciously intending to delay the plaintiff in the exercise of his right of voting, allowed a scrutiny to be held with regard to his vote, and took upon himself to determine, after such scrutiny, that the plaintiff was not entitled to vote at that election, whereby the plaintiff was delayed in the exercise of his privilege of voting, and a Burgess elected, the plaintiff being so hindered. To the first count the defendant pleaded not guilty, and also, that the plaintiff was not duly qualified or entitled to vote at the election; and the second and third counts were demurred to on the ground that they disclosed no sufficient cause of action. The plaintiff, on his part, demurred to the defendant's second plea, on the ground that it was ambiguous, as leaving it uncertain in what sense the word "qualified" was used.

The court thought the second count disclosed a sufficient ground of action, as it appeared from it that there was a refusal to receive and give effect to the plaintiff's vote, which was inserted in the column appropriated, under section 59, to votes tendered by persons *not* on the register. Section 82 enacted, that it should not be lawful to reject any vote tendered by any person whose name was on the register, except it appeared that the person claiming to vote was not the person described on the register, or that he had previously voted. The plaintiff was properly described on the register, and had not previously voted, and yet his vote was rejected. The action was also maintainable on the second count, as the holding a scrutiny was an unlawful act on the part of the returning officer, and it was clearly possible that the delay arising from the

holding of a scrutiny might have had the effect of preventing the plaintiff from exercising his right of voting. The court also thought the defendant's second plea was bad for the reason assigned, by leaving it in doubt whether the defendant meant to rely upon the absence of the plaintiff's name from the register, or upon his want of qualification as a voter. There was judgment for the plaintiff, therefore, upon all the points raised on the pleadings, with liberty, however, for the defendant to amend on the usual terms. In the course of the argument the difficulty was pointed out and commented upon by the court, of reconciling the provisions of the statute which disentitles a party from voting who has ceased to reside in or within the prescribed distance of a borough, and yet prevents the returning officer from rejecting a vote in such case. It would appear, therefore, that the power of adjudicating upon a vote tendered by a person whose name appears on the register, and who has ceased to reside within the limited distance, is reserved exclusively for a committee of the House of Commons. (See *ante*, p. 308).

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### HIGHWAY RATES.

10 & 11 VICT. c. 93.

An Act to continue until the 1st Day of October, 1848, and to the End of the then next Session of Parliament, an Act for authorizing the Application of Highway Rates to Turnpike Roads. [22nd July, 1847.]

1. 4 & 5 Vict. c. 59. *Recited act further continued.*—Whereas an act was passed in the 4 & 5 Vict. c. 59, intituled "An Act to authorize for One Year, and until the End of the then next Session of Parliament, an Application of a Portion of the Highway Rates to Turnpike Roads in certain Cases," which act has been continued by sundry acts until the 1st day of October in the year 1847, and to the end of the then next session of parliament; and it is expedient that the same may be further continued: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the said act shall be continued until the 1st day of October in the year 1848, and to the end of the then next session of parliament.

2. *Act may be amended, &c.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament.

## TURNPIKE ACTS.

10 &amp; 11 VICT. c. 105.

An Act to continue until the first Day of October 1848, and to the end of the then next Session of Parliament, certain Turnpike Acts. [22nd July, 1847.]

1. *Continuance of certain acts respecting turnpike roads in Great Britain, except 6 Geo. 4, c. clx.*—Whereas it is expedient that the several acts herein-after specified should be continued for a limited time: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That every act now in force for regulating, making, amending, or repairing any turnpike road in Great Britain which will expire on or before the end of the next session of parliament shall be continued until the 1st day of October in the year 1848, and to the end of the then next session of parliament, except an act passed in the 6 Geo. 4, c. clx., intituled "An Act for making and maintaining a Turnpike Road from Brompton and Earles Court in the Parish of St. Mary Abbott's Kensington in the County of Middlesex, to communicate with the road called Fulham Fields Road at North End in the same County; and for making another Turnpike Road to communicate therewith from the High Road from London to Fulham in the same county.

2. *Act may be amended, &c.*—That this act may be amended or repealed by any act to be passed in this session of parliament.

## NOTICES OF NEW BOOKS.

*Commentaries on the Constitutional Law of England.* By GEORGE BOWYER, D. C. L., Barrister-at-Law. Second edition. London: Stevens & Norton. Pp. 530.

We noticed the first edition of Mr. Bowyer's work at the time of its publication. The present edition has opportunely appeared prior to the meeting of the new parliament, in which it may be anticipated that many further alterations in our ancient institutions will be attempted, if not carried.

It has not escaped the notice of a popular contemporary, the *Athenæum*, that the new parliament differs to a very large extent from the last.

"It is in a special sense new; so many persons not having been introduced to that body since the first reformed parliament as on this occasion. In that former assembly there were 280 new members—in the present there are 223—who had no seats at the previous dissolution. But the composition of the house is even still more significant; increasing to a re-

markable extent the power of the middle classes. There have been returned a greater number of railway directors,\* engineers, and contractors, of barristers, of merchants, of retail tradesmen, and of political writers and lecturers; while the number of naval and military officers, of persons connected with noble families, and of country gentlemen, has been smaller than in any of the last fifteen years."

Mr. Bowyer appears to be conscious of important projected changes, the discussion of which may be expected in the next and future sessions, and some of which may seriously affect the Constitutional Law of England.

"The circumstances (he says) of the present time indeed render the study of constitutional law peculiarly important. The hitherto more or less well-defined boundaries of party are broken and obliterated by a remarkable course of parliamentary events. Men can no longer look in the same way as they formerly did to the guidance of leaders, and the recognized tenets of the school of politics, which their own general opinions may have led them to adopt. Party is not indeed extinguished, but it must in all probability be for the future more temporary, uncertain, and evanescent than it has been. We are, therefore, now chiefly left to exercise our individual judgment on particular questions and measures. And the task of forming that judgment is rendered more arduous, because a contest for power is going on between two classes in the nation; which bids fair to change the balance of the three powers wherein the machine of the state consists. It is therefore peculiarly necessary that those who enjoy any political liberty or franchise should consider each public question with reference to its probable effect on the practical working of the constitution. They must consequently endeavour to acquire a knowledge, not only of the general principles, but of the details of the constitution. Whatever may be their views as to the expediency or danger of political changes, that knowledge must be very necessary to enable them to see the bearing of those changes which they desire or fear. The study of constitutional law will, in many instances, show that supposed defects in our civil policy are more imaginary than real; and in others it will discover what remedies are most agreeable to the dictates of prudence, and the lessons of experience, and best calculated to harmonize with our mixed form of government. In some cases also it will point out where the sound principles of the common law are imperfectly carried into effect, and how those principles can best be brought to their just development."

Our author further observes, that

"We must not forget how important a part almost all private persons of any property have

\* It appears that there are nearly seventy chairmen or directors of railway companies, of whom about twenty are new members.

to perform in the working of that complex system, the British Constitution, especially since the Parliamentary Reform Acts, and that statute which lately placed the government of our towns on a very popular basis. And that extension of popular principles renders it now more especially necessary, that all men should beware lest they approach the public functions which the last has entrusted to them without sufficient knowledge of the system wherein they are responsible for the performance of their particular duty, and which they are bound to hand down uninjured to future generations."

The following are the several heads of the chapters into which the work is divided :—

1. Common law of England.
2. On equity.
3. Of the United Kingdom of Great Britain and Ireland.
4. Of the colonies, plantations, and other foreign possessions of the Crown.
5. Of the legislative power. The parliament—its constituent parts.
6. Of parliament—its laws and customs.
7. Of the executive power—of the Queen and her title.
8. Of the Royal Family.
9. Of the councils belonging to the Queen.
10. Of the Queen's duties.
11. Of the Queen's Prerogative.
12. Of the Queen's royal authority.
13. Of the Queen's Revenue—of the Queen's ordinary revenue.
14. Of the Queen's extraordinary revenue.
15. Of the judicial power and jurisdiction in general.
16. Of the public courts of common law and equity.
17. Of courts ecclesiastical.
18. Of courts military and maritime, and courts of a special jurisdiction.
19. Of the administration of justice in civil cases.
20. Of courts of a criminal jurisdiction.
21. Of the administration of criminal justice.
22. Of sheriffs, coroners, justices of the peace, constables, surveyors of highways, overseers of the poor, and of municipal corporations.
23. Of natural-born subjects, denizens, and aliens, and of corporations.
24. Of the primary rights and liberties of the subject.
25. Of the clergy.
26. The civil state.
27. Of the military and naval states.

To these are added tables and law of precedence, and a statement of recent alterations in the law.

Mr. Bowyer has rendered an essential service both to the public and the profession by this new edition of his *Constitutional Commentaries*, which he has very carefully revised.

## REPORT ON LEGAL EDUCATION.

### FOREIGN SCHOOLS OF LAW.

IN our last number (p. 491) were stated the means provided, and the guarantees taken, for the legal education of professional men of every grade in Prussia. The unprofessional classes are not less at-

tended to. The candidate for future employment in the administrative and official departments of the state is required, equally with the professional lawyer or jurist, as has been already seen, to go through all these preliminary studies and examinations, and, in addition, to prove his competency in those others which in Germany are comprised, as already stated, under the name of "*Camerialia*."

"This course embraces,—1. A general introduction to the science of national economy, finance, police, international law, and diplomacy, which would necessarily include a knowledge of the treaties existing between different states, and the doctrines of Roman law applicable to controversies of an international character. 2. The *Staatsrecht*, which includes an examination of the constitution and forms of government of the different states of Europe and America. This subject is treated in three different forms by three different lecturers. 3. A similar course on the institutions of antiquity and of the middle ages, together with comparative statistics. 4. The principles of executive government and police, and the conduct of internal administration. 5. National economy, the science of finance, the general history and principles of commerce. 6. The science of agriculture, embracing management of soils, breeding and superintendence of domestic animals, particularly with reference to the breeding of sheep and the production of wool; cure of the diseases of domestic animals; woods and forests, &c. 7. Manufactures; chemistry applied to manufactures; mining and metallurgy, constructive geometry, elementary engineering, mechanical technology, as exhibited by models, &c., &c. To this department are attached eight professors who lecture each several times in the week. Every candidate submitting to the state examination is liable to be examined on all those subjects, no matter to what particular class or department he devotes himself; and if he be found deficient, he will not be allowed to pass. At the same time, the examination will much depend upon the particular branch to which he destines himself; a competent knowledge in those to which, in his future profession, he will not be required particularly to apply himself, would be considered sufficient. In those bearing more specifically on his intended profession, accurate and extensive knowledge is insisted on. The examination and previous studies will thus to a certain extent vary according as the candidate intends himself for the foreign or home department, for diplomacy, the customs, mining, woods and forests, finance, or the police, &c.; nor will it be sufficient that the candidate himself makes such choice; his future profession as well as rank will much depend upon the manner in which this course of study and examination is gone through. Should he pass with distinction, he is eligible to the higher departments; if, on the contrar

he should be found not completely satisfactory in parts of his information, he obtains a certificate of his being sufficiently grounded in those subjects to which he answers, and this certificate will authorize his being appointed to inferior government offices, but not to superior ones, such as that of "Geheim Rath," or to any office to which a Geheim Rath is eligible. The Geheim Rath corresponds in our system to those officers who in permanent situations carry on the executive operations of the government, and whose functions are not of a purely mechanical but of an administrative character; such as the officers in the navy pay-office, the commissioners of customs, excise, &c., &c. The selection is made by the legal student generally at the period of passing the state examination. The private gentleman is not compelled to the same course of study as the professional or official; the reason is obvious: he is not, as such, intended for the same duties, nor is he placed in a position even analogous to that of the private gentleman with us. Unless in the service of the state, he has in Prussia no political functions, and all magisterial ones, such as those of the Patrimonial-Richter and Frieden's-Richter, are discharged by members of the legal profession only, like the stipendiary or resident magistrate appointed by the government here. The sons of the nobility, generally, enter the university either with a view to become government officers and servants of the state, or in order to devote themselves to agriculture. Those who restrict themselves to the latter pursuit, in the event, which is not usual, of their entering the university at all, enter it as students of philosophy, as "Camerallists," which gives them the kind of knowledge most useful for their purposes, without insisting on the specialties; in other words, the general principles of science, finance, political economy, commercial statistics, agricultural science, &c., &c.; and in addition, if desired, a most enlarged system of ancient and modern literature. It is to be observed, too, that the whole of the courses already noticed are opened to such students, though not insisted on; (they pass no examination, nor is it even necessary they should have matriculated;) together with the innumerable others of an analogous nature which every hour are going on in the university. To form some estimate of their frequency and minuteness, it is sufficient to refer to the lectures in the faculty of jurisprudence alone, as given in the programme of the University of Berlin, in last year, from the 15th of October, 1845, to the 28th March, 1846. The subjects of these lectures amount to not less than 32, and are given by 14 professors, some of them lecturing on two or three, at different hours of the day. Amongst them are found the encyclopædia of law, (a general introduction to the science of jurisprudence,) two professors weekly, four hours each. History and moral philosophy of law and state policy: selected passages of peculiar difficulty from the Institutes of Justinian, one professor, two hours a week. Fragments of Ulpian, two

hours a week. History of the German Chambers, two hours a week. Explanations of judicial authorities of a purely German character, as opposed to civil law. The 'Sachsen Spiegel,' a body of statutes analogous to the 'Carolina,' (a body of criminal law formed under Charles V.,) one hour a week. Laws respecting the international rights of the German states and principalities, and respective relations to one another; as, for instance, the rights co-ordinate with and subordinate to the German Diet, to which five hours a week are devoted. Interesting questions of law which have arisen in the 18th and 19th centuries, two hours weekly. Criminal psychology, or an inquiry into the moral responsibility and free agency of the accused. Trial by jury, which, although not existing in Prussia, is there as elsewhere the subject of investigation and discussion. When it is added that not only is full and easy access permitted to all these courses, but that they are frequently objects of great attraction, from the remarkable ability, high reputation, extensive experience, and well-known zeal of the professors, and, in consequence, well attended, it cannot be denied that every means are adopted to provide largely and efficiently for the legal education of every class, professional and unprofessional. Nor is this to the exclusion of other studies. Whilst these courses are going on, it is not unusual for the legal student to frequent others in the faculty of philosophy, which embraces science, literature, and art, the fine arts as well as the useful and mechanical. No complaint is made by the professor that he is overburdened; nor by the student (though, independently of his private study, he may have to attend daily six or seven lectures of an hour each,) that he is overtasked."

The committee consider it unnecessary to enter into any comments on the contrast which *our* system presents to that just noticed.

---

### INCORPORATED LAW SOCIETY, AND THE METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

---

WE have received many inquiries regarding the respective duties of these two Associations. Some of our correspondents suppose that all the objects which it may be proper to obtain, can be pursued by the Incorporated Law Society, which is composed as well of country as town solicitors.

The Incorporated Law Society, though open to the whole profession, is, and probably will always continue to be, essentially a London institution alone. No considerable number of provincial solicitors have joined it; and it is doubtful whether they will ever do so. We may

hereafter advert to the cause of this, but in the meantime we must take the state of the profession as we find it, and not shut our eyes to the undeniable fact, that the provincial solicitors think that the Incorporated Society is not, and cannot be made, the medium of a *general union*, which is all-important to the objects in view. At all events, there is no probability of such a union at present, except through the new society, the object of which is not to interfere with, or in any respect supersede, the services of the Incorporated Society, but to assist its efforts in those matters which it *can* take up, and to effect that in parliament and with the public which it *cannot* do, but which the state of the profession indispensably requires.

There seems no doubt that the operations of the Incorporated Law Society and those of the Metropolitan and Provincial Association will be conducted without any clashing with each other. The nature of the two bodies in itself indicates their distinct spheres of action. The charter of the former society and the power of examination and admission, whilst they confer advantages, at the same time impose restraints. The Metropolitan and Provincial Association, free from those restraints, can prosecute the objects of the profession in parliament and before the public, with a view to the removal or prevention of injuries, and in a manner which it would be inconsistent in the Incorporated Society to attempt, and probably impossible for it adequately to pursue; but not possessing the advantages of a chartered existence, nor any control over the admission into the profession, the new association would fall short of what the Incorporated Law Society can do with reference to the important subject of legal education. On the first of these measures, therefore, the Metropolitan and Provincial Society would naturally be the most active;—on the second, the Incorporated Society. The right principle seems to be that of *mutual assistance* on these topics; and, of course, still more so on the general topics of legal improvement which are common to the whole profession, and which both bodies may very usefully prosecute together, taking care to keep up such a cordial good understanding as will render them useful auxiliaries to each other.

## COUNTY COURTS ACT.

JURISDICTION OF BANKRUPTCY COMMISSIONERS.

To the Editor of the Legal Observer.

who, in answer to "Tacitum," refers to the 7th, 98th, and 99th sections of the new County Courts Act, appears to have misunderstood the question propounded, and to have given an incorrect reply.

The inquiry made in your notice to correspondents, *ante*, p. 428, is simply, whether a creditor, who, previously to the passing of the above-mentioned act, obtained a judgment for a debt not exceeding 20*l.*, can summon the debtor before a judge of the new County Courts, under the first section of the Small Debts Act, 8 & 9 Vict. c. 127, such County Court, at the time of the passing of the said Small Debts Act, not being in existence. From the answer of your Birmingham correspondent it would appear that he understands the question as applying only to a judgment in a court holden under any act repealed by the new County Courts Act. That is evidently not correct. The query applies to "a judgment or order obtained from any court of competent jurisdiction in England," in the words of the first section of the Small Debts Act.

It seems that the jurisdiction of the Commissioners of Bankruptcy is not, in all cases, taken away by all or any of the four sections referred to by your Birmingham correspondent.

The 6th section enacts, that as soon as a court should have been established in any district under the County Courts Act, the jurisdiction of the Commissioners of Bankruptcy should be taken away *with respect to judgments or orders obtained in the court so established*,—that part of the clause which repeals the 7 & 8 and 8 & 9 Vict., "so far as the same relate to or affect the jurisdiction and practice of the court so established," obviously referring to other enactments of the repealed statutes,—(by the rule, "*expressio unius*," &c.) more immediately relating to and affecting the jurisdiction and practice.

The 7th section referred to has nothing to do with the point.

The 98th section provides, "that it shall be lawful for any party who has obtained any unsatisfied judgment or order in any court held by virtue of this act, or under any act repealed by this act," to obtain a summons, &c. This clause, therefore, does not give jurisdiction to the new County Courts in respect of any judgment or order obtained in any other than the courts mentioned in the clause; consequently it gives no jurisdiction to the County Courts in respect of any judgment or order obtained in any superior court.

The 99th section does not go to the point. The question of "*Tacitum*," may be correctly answered by saying that the jurisdiction of the Commissioners of Bankruptcy is not, *except as respects judgments obtained in the County Courts Act, or in an act repealed by that act*, and that, therefore, the Commissioners of Bankruptcy still have authority to summon a party where the judgment or order has been obtained in one of the superior courts.



## CITY OF LONDON SMALL DEBTS ACT.

## SCHEDULE OF FEES.

	AMOUNT OF DEMAND.					
	Not exceeding 20s.	Exceeding 20s. and not exceeding 40s.	Exceeding 40s. and not exceeding £5.	Exceeding £5, and not exceeding £10.	Exceeding £10.	
					Founded on Contract.	Founde on Tort.
<b>JUDGE'S FEES.</b>						
Every summons - - - - -	s. d. 0 3	s. d. 0 6	s. d. 1 0	s. d. 2 0	s. d. 3 0	s. d. 3 0
Every hearing without a jury - -	1 0	1 6	2 6	7 6	10 0	15 0
Every hearing or trial with a jury -	2 0	3 0	5 0	10 0	15 0	20 0
Every order or judgment or applica- tion for an order - - - - -	0 3	0 6	1 0	2 0	3 0	3 0
<b>CLERK'S FEES.</b>						
Entering every plaint and issuing the summons thereon - - - - -	0 3	0 6	1 0	2 0	3 0	3 6
Every subpoena, when required - -	0 3	0 6	0 9	1 0	1 6	1 6
Every hearing, trial, or nonsuit, without a jury - - - - -	0 4	0 6	1 0	1 6	2 0	3 6
Adjournment of any cause - - -	0 3	0 4	0 6	1 0	2 0	2 0
Entering and giving notice of special defence - - - - -	0 3	0 6	1 0	1 6	2 0	2 0
Swearing every witness for plaintiff or defendant - - - - -	0 2	0 2	0 3	0 4	0 6	1 0
Entering and drawing up every judg- ment and order, and copy thereof	0 3	0 6	1 0	1 6	2 6	3 0
Payment of money in or out of court, whether or not by instalments at different times, including notice thereof, and taking receipt - -	0 2	0 4	0 6	—	—	—
Paying money into court, and enter- ing same in books, and notice thereof, or of sum in full satisfac- tion having been paid into court, each instalment or payment - -	—	—	—	0 6	0 8	1 0
Payment of money out of court, and taking receipt, exclusive of stamp	—	—	—	0 9	1 0	1 6
Every search in the books - - -	0 2	0 2	0 4	0 6	1 0	1 0
Issuing every warrant, attachment, or execution - - - - -	0 6	0 6	1 0	1 6	2 6	3 0
Supersedeas of execution, or certifi- cate of payment, or withdrawal of cause - - - - -	0 3	0 6	0 6	1 0	1 6	2 0
Warrant of commitment for an insult or misbehaviour in court - - -	1 0	1 0	1 0	1 0	1 0	1 0
Entering and giving notice of jury being required - - - - -	0 6	0 9	1 0	1 6	2 0	2 6
Issuing summons for jury - - -	0 6	0 9	1 0	1 6	2 0	2 6
Swearing jury - - - - -	0 6	0 8	0 10	1 0	1 6	1 6
Every hearing, trial, or nonsuit, with a jury - - - - -	1 0	1 6	2 0	3 0	5 0	7 6
Taking recognizance or security for costs - - - - -	—	—	—	2 0	2 6	3 0
Inquiring into sufficiency of sureties proposed, and taking bond or re- moval of plaint, or grant of new trial, or other occasion - - -	2 6	2 6	2 6	2 6	2 6	2 6
Taxing costs - - - - -	—	—	—	1 0	2 0	3 0

N. B.—Where the plaintiff recovers less than his claim so as to reduce the Scale of Costs, the plaintiff to pay the difference.

	AMOUNT OF DEMAND.					
	Not exceeding 20s.	Exceeding 20s. and not exceeding 40s.	Exceeding 40s. and not exceeding £5.	Exceeding £5, and not exceeding £10.	Exceeding £10.	
					Founded on Contract.	Founded on Tort.
BAILIFF'S FEES.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
Calling every cause - - -	0 2	0 3	0 4	0 6	1 0	1 6
Affidavit of service of summons out of the jurisdiction - - -	0 2	0 3	0 6	1 0	1 6	2 0
Serving every summons, order, or subpœna within one mile of court house - - -	0 3	0 4	0 6	0 10	1 0	1 6
If above one mile, then extra for every other mile - - -	0 2	0 2	0 3	0 4	0 4	—
Execution of every warrant, precept, or attachment against the goods or body within one mile of the court house - - -	1 6	2 6	3 6	4 0	5 0	7 0
If above one mile, then extra for every other mile - - -	0 3	0 3	0 4	0 6	0 6	0 6
If two officers be necessary in the judgment of the court, then extra, within one mile of the court house	1 0	1 6	2 0	2 0	2 6	3 0
If above one mile, then extra for every other mile - - -	0 3	0 3	0 4	0 6	0 6	0 6
Keeping possession of goods till sale, per day, not exceeding five days - - -	1 0	1 6	2 0	2 0	2 6	3 0
Carrying every delinquent to prison, including all expenses and assist- ante, per mile - - -	1 0	1 0	1 0	1 0	1 0	1 0
Issuing warrant to clerk of another court - - -	1 0	1 6	2 0	2 6	3 0	3 6

N. B.—The several fees payable on proceedings in replevin to be regulated on the same scale by the amount distrained for, and on proceedings for the recovery of tenements by the yearly rent or value of the tenement sought to be recovered.

## THE LEGAL OBSERVER EDITION OF THE STATUTES OF THE LAST SESSION.

THE Statutes effecting Alterations in the Law passed during the last Session, which have been printed verbatim in the present volume of the *Legal Observer* are as follow:—

	Page.
Drainage of Land, 10 Vict. c. 1† . . .	94
Inclosure of Commons, 10 Vict. c. 25 . . .	120
Removal of Poor, 10 & 11 Vict. c. 33 . . .	313
Abolition of a Mastership in Chancery, 10 & 11 Vict. c. 60 . . . . .	236
Threatening Letters, 10 & 11 Vict. c. 66 . . .	286
Custody of Offenders, 10 & 11 Vict. c. 67 . . .	287
House of Commons Costs Taxation, 10 & 11 Vict. c. 69 . . . . .	339
Juvenile Offenders, 10 & 11 Vict. c. 82, 392	

Securing Trust Funds and relief of Trustees, 10 & 11 Vict. c. 96 . . . . .	365
Chancery Affidavit Office, 10 & 11 Vict. c. 97 . . . . .	337
Bankruptcy and Insolvency, 10 & 11 Vict. c. 102 . . . . .	310
Tithes Amendment, 10 & 11 Vict. c. 104 . . .	366
Removal of Poor, 10 & 11 Vict. c. 110 . . .	414
Copyhold Commission, 10 & 11 Vict. c. 101 . . . . .	437
Rating Stock in Trade, 10 & 11 Vict. c. 77 . . . . .	437
Administration of Poor Laws, 10 & 11 Vict. c. 109 . . . . .	453
Colonial Copyright, 10 & 11 Vict. c. 95, 456	
City of London Small Debts Court Act, 10 & 11 Vict. c. lxxi. . . . .	471
Highway Rates, 10 & 11 Vict. c. 93 . . .	499
Turnpike Acts, 10 & 11 Vict. c. 105 . . .	500

**LOCAL AND PERSONAL ACTS,  
DECLARED PUBLIC,  
AND TO BE JUDICIALLY NOTICED.**

[Continued from p. 462.]

100. An Act to enable the Dublin and Drogheda Railway Company to make a railway from the Navan Branch of the Dublin and Belfast Junction Railway in the county of Meath to the town of Kells in the same county.

101. An Act for making a railway from Abercrave Farm in the parish of Ystradgunlais in the county of Brecon to Swansea in the county of Glamorgan, with branches, to be called "The Swansea Valley Railway."

102. An Act to authorize a deviation in the line of the Manchester and Lincoln Union Railway.

103. An Act to enable the Manchester and Leeds Railway Company to make an extension of the Holmfirth Branch of the Huddersfield and Sheffield Junction Railway.

104. An Act to enable the South-eastern Railway Company to make a railway to connect the London and Greenwich Railway and the North Kent Line of the South-eastern Railway with the Bricklayers Arms Branch Railway.

105. An Act for making a railway from the Liverpool and Bury Railway near Liverpool, through Crosby, to the town of Southport, to be called "The Liverpool, Crosby, and Southport Railway."

106. An Act for widening, altering, and improving the Dundee and Newtyle Railway.

107. An Act to empower the London and North-western Railway Company to make a railway from the London and North-western Railway near Bletchley to Newport Pagnel, Olney, and Wellingborough.

108. An Act to consolidate and amend the acts relating to the North Staffordshire Railway Company, and to authorize certain alterations of and the formations of certain branches and additional works in connexion with their undertaking.

109. An act for making certain new lines of railway in connexion with the South Wales Railway, and certain alterations in the line of the said railway; and for other purposes.

110. An Act to authorize the construction of a railway from Cannock in the county of Stafford to Uttoxeter in the same county, to join the North Staffordshire Railway Potteries Line, by a company to be called "The Derbyshire, Staffordshire, and Worcestershire Junction Railway Company."

111. An Act to authorize the sale to the Dublin and Drogheda Railway Company of the Navan Branch of the Dublin and Belfast Junction Railway, and to enable the Dublin and Drogheda, and Dublin and Belfast Junction Railway Company with a branch from Drogheda to Navan, the Ulster and the Dundalk and Enniskillen Railway Companies, or any of them, to amalgamate with one another.

112. An Act to empower the Boston, Stamford, and Birmingham Railway Company to

make a railway from the Syton and Peterborough Railway at or near Peterborough to the Stamford and Wisbech Line of the Boston, Stamford, and Birmingham Railway in the parish of Thorney and Isle of Ely.

113. An Act to authorize the East Lincolnshire Railway Company to purchase an existing lease on the Louth navigation.

114. An Act to empower the London and North-western Railway Company to admit certain parties as shareholders in their undertaking for making a railway from Coventry to Nuneaton in the county of Warwick; and for other purposes.

115. An Act to enable the London and South-western Railway Company to make railways from Andover to join their Salisbury Branch Railway at Michaelmarsh and from the same branch at Romsey to join the Southampton and Dorchester Railway at Redbridge, all in the county of Southampton, to be called "The Andover and Southampton Junction Railway."

116. An Act for enabling the Manchester, Sheffield, and Lincolnshire Railway Company to make a railway at Bugsworth, and for amending the acts relating thereto.

117. An Act for the enlargement of the Wearmouth Dock, and the construction of new works in connexion therewith; and for other purposes relating thereto.

118. An Act to empower the London and North-western Railway Company to make a branch railway from the London and North-western railway near Atherstone to the Midland Railway at Whitacre in the county of Warwick.

119. An Act to enable the Glasgow, Kilmarnock, and Ardrossan Railway Company to make certain branch railways, and to make certain deviations from the line and levels of the said railway; and to amend the act relating to the said railway.

120. An Act to authorize a certain alteration in the line of the Birmingham, Wolverhampton, and Stour Valley Railway, and to amend the act relating thereto; and for other purposes.

121. An Act to authorize a lease of the undertaking of the Shropshire Union Railways and Canal Company to the London and North-western Railway Company.

122. An Act to enable the Midland Railway Company to alter the line of the Leicester and Swannington Railway, and to make certain branches therefrom; and for other purposes.

123. An Act for constructing and maintaining docks and other works at or near the south side of the town of Swansea in the town and franchise of Swansea in the county of Glamorgan.

124. An Act for lighting with gas the town of Croydon and its vicinity in the county of Surrey.

125. An Act to amend the East Lincolnshire Railway Act, 1846, and to authorize the construction of a branch railway to join the Great Grimsby and Sheffield Junction Railway near Grimsby.

126. An Act to construct waterworks for supplying with water the town of Ralmouth and

certain parishes adjoining thereto in the county of Cornwall.

127. An Act for improving and maintaining the harbour of Macduff in the county of Banff.

128. An Act to repeal the acts relating to Warkworth Harbour in the county of Northumberland, and to make other provisions in lieu thereof.

129. An Act for extending and enlarging the provisions of the act for regulating buildings and party walls within the city and county of Bristol, and for forming certain streets, and for widening other streets within the same.

130. An Act to enable the Midland Great Western Railway of Ireland Company to make certain deviations in the authorized line of the said railway; and to amend the acts relating thereto.

131. An Act to amend and enlarge the powers and provisions of the Westminster Improvement Act, 1845, and to authorize the application of certain rates in aid of the improvements.

132. An Act to empower the London and North-western Railway Company to make a railway from the London and North-western Railway near Watford to St. Albans, Luton, and Dunstable.

133. An Act to authorize the consolidation into one undertaking of the York and Newcastle and the Newcastle and Berwick Railways.

134. An Act for enabling the York and Newcastle Railway Company to make certain branch railways in the counties of Durham and York; and for other purposes.

135. An Act to enable the Midland Railway Company to make a railway from near Leicester, via Bedford, to Hitchin and to Northampton and Huntingdon, with branches; to enlarge the Leicester station of the Midland Railway; and for other purposes.

136. An Act to empower the North British Railway Company to extend the Haddington branch of the North British Railway, to make certain alterations in the Hawick and Kelso branches of the same railway, and for other purposes.

137. An Act to amend the acts relating to the Ipswich and Bury Saint Edmunds Railway Company, and to enable the company to construct a railway from the Ipswich and Bury Saint Edmunds Railway near Ipswich to Woodbridge.

138. An Act to enable the Manchester, Sheffield, and Lincolnshire Railway Company to make a branch railway from the Marken Rasen and Lincoln Line of their railway in the parish of Stainton-by-Langworth to the town of Wragby in the county of Lincoln.

139. An Act for enabling the London and North-western Railway Company to make a railway from Birmingham to Lichfield, and for amending the former acts relating to the said company.

140. An Act for enabling the York and North Midland Railway Company to extend the line of their Harrogate Branch Railway, and make a station at Harrogate.

141. An Act for enabling the York and North Midland Railway Company to make a railway from their line at Burton Salmon to Knottingley, with a branch therefrom; and for other purposes.

142. An Act to enable the Aberdeen Railway Company in part to alter their branch railway to Brechin.

143. An Act to enable the Great Northern Railway Company to alter the line of their railway near Doncaster.

144. An Act to authorize the Shrewsbury and Chester Railway Company to make certain branches, and to provide station room and other conveniences in the city of Chester, and to raise additional capital for these purposes; and for amending the former acts relating to the said company.

145. An Act for enabling the London and South-western Railway Company to make extensions of the Guildford Extension and Portsmouth and Fareham Railway near Portsmouth, and a deviation in the authorized line thereof near Godalming.

146. An Act to enable the Great Northern Railway Company to make certain alterations in the line of their railway as already authorized between Grantham and York.

147. An Act to authorize an extension of and the construction of a station in connexion with the Chester and Holyhead Railway at Chester; and for other purposes.

148. An Act to enable the Great Northern Railway Company to take a lease of or to purchase the East Lincolnshire Railway, and the Boston, Stamford, and Birmingham Railway.

149. An Act for enabling the Birmingham, Wolverhampton, and Dudley Railway Company to purchase lands for additional station room at Birmingham, and for authorizing the sale of the undertaking of the said company to the Great Western Railway Company.

150. An Act to enable the Midland Railway Company to enlarge their stations at Masbrough and Normanton respectively, and to construct additional sidings or branch railways.

151. An Act to enable the Edinburgh, Leith, and Granton Railway Company to make a branch railway to the Upper Drawbridge in the town of Leith.

152. An Act to enable the Edinburgh, Leith, and Granton Railway Company to make a branch railway from Bonnington to Trinity Villa; to acquire certain pieces of land; and to shut up and use certain roads and streets for the purposes of the said railway.

153. An Act for making a railway from Portadown in the county of Armagh to Dungannon in the county of Tyrone, to be called "The Portadown and Dungannon Railway."

154. An Act for making a railway from the Great Western Railway at Cheltenham to join the Oxford and Rugby Railway near Oxford, with a branch therefrom; and for other purposes.

155. An Act to empower the Boston, Stamford, and Birmingham Railway Company to make a railway from Wisbech to Sutton Bridge.

with a branch at Sutton Saint Mary, and to improve the harbour at Sutton Bridge.

156. An Act to authorize the purchase by the Eastern Counties Railway Company of the North Woolwich Railway, and the lease of the pepper warehouses and wharfs of the East and West India Dock Company.

157. An Act to enable the Eastern Counties Railway Company to enlarge their London and Stratford stations; and to amend some of the provisions of the act relating to the Eastern Counties Railway Company.

158. An Act to enable the Eastern Counties Railway Company to make a railway from the Eastern Counties Railway near Cambridge to the Bedford and Bletchley Railway at or near Bedford, with branches.

159. An Act to incorporate the Huddersfield and Manchester Railway and Canal Company and the Leeds, Dewsbury, and Manchester Railway Company with the London and North-western Railway Company.

160. An Act to enlarge the powers of the Dublin, Dundrum, and Rathfarnham Railway Act, 1846, and to enable the company to make an extension to Stephen's Green.

161. An Act for enabling the Huddersfield and Manchester Railway and Canal Company to alter a portion of the line of their Oldham Branch; and for other purposes.

162. An Act for making a railway from Mold in the county of Flint to join the Chester and Holyhead Railway in the parish of Hawarden in the same county, with branches, to be called "The Mold Railway."

163. An Act to enable the Manchester and Leeds Railway Company to make certain branches, extensions, and other works, and to alter the name of the company.

164. An Act for enabling the Blackburn, Darwen, and Bolton Railway Company to make certain alterations in the line of their railway in the parishes of Blackburn and Bolton-in-the-Moors; and for amending the acts relating thereto.

165. An Act for enabling the Manchester, Sheffield, and Lincolnshire Railway Company to make a coal branch from their Thurgoland station to the township of Stainborough.

166. An Act to enable the Manchester and Leeds Railway Company to alter the line and levels of the Brighouse Branch of the West Riding Union Railways and to make a new line into Leeds.

167. An Act to enable the Direct London and Portsmouth Railway Company to make an approach to the town of Dorking, and a deviation in the line and certain alterations in the levels of their railway and in the Croydon and Epsom Railway.

168. An Act to enable the Glasgow, Paisley, and Greenock Railway Company to make a certain branch railway to the Caledonian Railway at Glasgow, and to divert part of the Glasgow, Paisley, and Ardsrossan Canal.

169. An Act to amalgamate the Glasgow, Paisley, and Greenock Railway with the Caledonian Railway, and to authorize the raising

of additional money by the said last-mentioned company.

170. An Act for making a deviation in the line of the Lynn and Ely Railway, and for forming docks within the borough of King's Lynn.

171. An Act to enable the Lynn and Ely Railway Company to make a navigation from Lynn to Wormegay, all in the county of Norfolk.

172. An Act to enable the Caledonian Railway Company to make certain branch railways in the counties of Dumfries and Cumberland.

173. An Act for making a railway from the North British Railway at East Linton to Ormiston, to be called "The East Lothian Central Railway."

174. An Act to amalgamate the Eastern Union and Ipswich and Bury Saint Edmunds Railway Companies.

175. An Act to enable the Chard Canal and Railway Company to extend their railway from Ilminster to Chard, all in the county of Somerset.

176. An Act to enable the Midland Great Western Railway of Ireland Company to make a railway from Athlone to Galway.

177. An Act to enable the Newport, Abergavenny, and Hereford Railway Company to extend their railway from the neighbourhood of Pontypool to the Taff Vale Railway.

178. An Act for making a railway from the Northampton and Peterborough Branch of the London and North-western Railway to the town of Banbury, to be called "The Northampton and Banbury Railway;" and for other purposes.

179. An Act for making a railway from the Swansea Vale Railway at Ynysymond in the parish of Cadoxton to Nantmelyn in the parish of Llangefelach, both in the county of Glamorgan, with branches.

180. An Act to authorize the purchase by the Dublin and Drogheda Railway Company of the Navan Branch of the Dublin and Belfast Junction Railway, and to authorize the Dublin and Drogheda, the Dublin and Belfast Junction Railway, with a branch from Drogheda to Navan, the Ulster, and the Dundalk and Enniskillen Railway Companies, or any of them, to amalgamate with one another.

181. An Act to amend some of the provisions of the Glasgow, Dumfries, and Carlisle Railway Act, 1846.

182. An Act to amend the act relating to the Glasgow, Dumfries, and Carlisle Railway Company, and to authorize the company to make a branch railway to Kirckudbright, with diverging lines therefrom; and for other purposes.

183. An Act to amend the acts and alter the terms of amalgamation of the Glasgow, Dumfries, and Carlisle Railway Company, and of the Glasgow, Paisley, and Kilmarnock, and Ayr Railway Company.

184. An Act to enable the Glasgow, Paisley, Kilmarnock, and Ayr Railway Company to make certain branch railways in the county of Ayr, and to alter the line of the Glasgow and

Belfast Union Railway; and for other purposes.

185. An Act to authorize the construction of certain branch railways in the county of Ayr in connexion with the Glasgow, Paisley, Kilmarnock, and Ayr Railway; and for other purposes.

186. An Act to amend the acts relating to the Glasgow, Paisley, Kilmarnock, and Ayr Railway, and to provide additional station accommodation; and for other purposes.

187. An Act for making a railway from Parkgate in the parish of Great Neston in the county of Chester to join the Chester and Birkenhead Railway in the parish of Bebbington in the same county.

[To be continued in our next.]

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Lord Chancellor.

*Dresser v. Morton.* July 3rd & 17th, 1847.

NEW ORDERS (NO. 88).—RECEIVER.—COMMON AFFIDAVIT OF MEANS IN FORMA PAUPERIS.—PALPABLE ERROR IN ORDER OF COMMITTAL.—DISCHARGE OF PRISONER.

*The 84th Order of May, 1845, does not apply to the appointment of a receiver, but merely to his taking possession of the property. Therefore notice is not required that an application will be made for the appointment of a receiver under the 84th of the same orders.*

*A special affidavit of means will not be required from a person defending in forma pauperis, if it appears from a counter affidavit that such defendant is only entitled to property upon which the plaintiff has a lien, (although the lien is not mentioned in the bill,) and to an unavailable share in the supposed residuary estate of a deceased relative.*

*If, on the return to a writ of habeas corpus, it appears that the order of committal misstates the date of the decree, for non-obedience to which an attachment has issued, the prisoner is entitled to be discharged, and he will not be detained for the costs of an irregular motion subsequent to his committal.*

Mr. Teed moved to discharge an order obtained by the plaintiff under the 84th of the General Orders of May, 1845, appointing a receiver of the defendant's property. An order had been made on the 3rd of June last, by Vice-Chancellor Wigram, that the bill should be taken *pro confesso* on the 11th, unless good cause should be shown to the contrary. The grounds for the present application were, that neither the defendant, who had been in prison since the 18th of January last, nor his solicitor while acting for him, had been served with

notice that a receiver would be appointed. It was admitted, that under the 84th Order of May, 1845, the court, in pronouncing the decree, might order a receiver of the real and personal estate of the defendant against whom the bill has been ordered to be taken *pro confesso* to be appointed, with the usual directions. The point was, whether notice of such appointment was not required by the 88th Order, that "no proceeding is to be taken, and no receiver appointed, under the decree, &c., is to take possession of, or in any way intermeddle with, any part of the real or personal estate of a defendant, &c., without leave of the court, which is to be obtained on motion with notice served on such defendant, or his solicitor, unless the court dispenses with such service."

The Lord Chancellor, having perused and compared the 84th and 88th Orders, said he thought it clear the latter did not imply that no proceedings should be taken to appoint a receiver, but that a receiver who had been appointed under the 84th Order should not take possession, except as directed by the 88th Order.

Mr. Teed, on a subsequent day, (July 17th,) moved in the same cause to discharge an order made by the Master of the Rolls, on the 9th of June last, discharging an order obtained by the defendant on the 2nd of the same month, to sue *in forma pauperis*.

Mr. Walker and Mr. Anderson opposed the motion. The defendant had merely put in the common affidavit to the effect that he was not worth 5*l.* in the world, wearing apparel and the subject-matter of the suit excepted. They submitted that such was not the case, for a counter affidavit showed that he had certain bank shares, and was entitled to a distributive share in the residue of his deceased mother's estate. It was upon this counter affidavit that the Master of the Rolls had dispaupered the defendant. They cited *Goldsmith v. Goldsmith*, 5 Hare, 125; and referred to the 6th Order of the 9th of May, 1839, and *St. Victor v. Devereux*, 6 Beav. 584.

Mr. Teed, in reply, urged that the bank shares were the subject-matter of the suit, (although they were not mentioned in the bill,) for the plaintiff, who was the registered officer of the bank, would, if the bill succeeded, retain them as security for the debt due by the defendant. With respect to his supposed distributive share in his mother's property, it was so uncertain that the defendant was unable to raise money upon it. The counter affidavit merely stated, that information had been received from the executor that there was likely to be a residue.

The Lord Chancellor did not consider that it was necessary to put in a special affidavit, as it did not appear that the defendant was worth more than 5*l.*, exclusive of the property mentioned in the counter affidavit, and which was clearly not available for carrying on the suit. With respect to the shares, the bank claimed to retain them as a security for the debt; and with respect to the defendant's share in the

residue of his mother's property, it was certain that there would be any residue. His lordship having expressed a strong inclination to hear what the defendant had to urge in explanation, it was arranged that the motion should stand over.

Mr. Teed then moved that the defendant, who had been in custody since the 18th of January last, might be discharged. The defendant had been taken under an order of the 16th of December, 1846, for not putting in and producing certain papers and documents before the Master, according to the exigency of a decree made in this cause on the 12th of July, 1846. No decree of such date had been made, but there was one made on the 12th of June, 1846. The defendant had no papers or documents to produce, nor had he received any notice of the last-mentioned decree. The solicitor who had formerly acted for him had been served with a copy of it, but had repudiated.

Mr. Walker suggested that this motion could not be entertained, as the defendant had, on the 9th of February last, made an irregular motion before the Vice-Chancellor of England, the costs of which had not been paid.

The Lord Chancellor. If the original order of committal is irregular, all subsequent orders fall. An application might have been made to a common law court. [Mr. Walker. Such an application was made to the Court of Queen's Bench, which refused to entertain it.] The Lord Chancellor said, he should have thought that it would have interfered in a case of such palpable mistake, and his Lordship directed the prisoner to be discharged.

#### Rolls Court.

*Smith v. Earl of Effingham.* July 28th, 1847.

**ACTION AT LAW.—EQUITY RESERVED.**

*The court will not, upon an equity reserved, give relief to a party who has failed to establish his right at law, though the failure has arisen from the forms of proceeding at law having prevented the real question being tried; but it will, on a proper application, take such steps as may be required to have the legal right fairly tried.*

In this case the original bill had been retained with liberty to the plaintiff to bring an action at law to try his title to certain lands, and a direction that the defendants should not set up the Statute of Limitations as a bar to the action. An action was accordingly brought and tried in the summer of 1844; but as the nominal defendants at law were, with one exception, the occupiers, not the owners of the lands in dispute, and consequently had not been made parties to the bill in equity, they all, with one exception, availed themselves of the statute, notwithstanding the order of the court, and the plaintiff consequently failed in obtaining a verdict against any, except the one who was a party to the bill in equity. The

plaintiff subsequently moved in the Exchequer to set aside the verdict, but failed. After this motion in the Exchequer had been disposed of, the decree in the original suit was reheard by the present Lord Chancellor, and affirmed, without any alteration in the directions respecting the action at law being made, or even asked for. The present bill was a bill of revivor and supplement, stating the proceedings at law on the action and the motion in the Exchequer, with the view of showing that the directions given by the court had not been sufficient to secure the trial of the question which the court desired to have tried, and asking for the same relief as if the plaintiff's right had been established at law against all the defendants, as it was against the one who had not set up the statute.

Mr. Walcocks, Mr. Cooke, and Mr. Cory appeared for different parties.

July 28th. Lord Langdale, after stating the facts, said, that in this case it appeared that the plaintiff could not obtain relief in equity until he had established his title at law. Now, the court did not usually interfere with any incident of a trial at law: it did not give directions for a new trial: after the matter had been decided at law, the case came on only on what was called the equity reserved. Still, on a proper application, showing that the real question had not been fairly tried at law, either because the directions given by the court had not been observed, or because the decree did not contain all the directions necessary to make the trial fair, relief would be given, and, if needful, the case might be reheard in order to vary the decree. But in this case no complaint was made of the directions in the decree, no application to obtain new directions: the plaintiff asked only that he might have, after he had failed to establish his right at law, relief greater than he could have been entitled to before he had sought to establish it. The claim which he made by his supplemental bill depended entirely upon what took place on the trial. It appeared that he brought his action against certain persons who were not parties to the bill in equity; and if, in consequence of this circumstance, the legal right could not be properly tried, he ought to have an opportunity of trying it more effectually, but he had not made his application in proper form. He should dismiss the bill so far as it was a bill of supplement, but without prejudice to the plaintiff taking any other proceedings he might be advised, and order the bill of revivor to stand over for the purpose of allowing the plaintiff to institute such proceedings.

#### Vice-Chancellor of England.

*Ex parte Lupton.* July 31, 1847

**CONSTRUCTION OF THE BRISTOL AND EXETER RAILWAY ACT—6 & 7 W. 4, C. 45.—PAYMENT OF PURCHASE MONEY OUT OF PROCEEDS OF SALE.**

*Where a railway company purchases land settled upon a tenant for life, with remain-*



*der in tail, and the purchase money is paid into court; on an application by the tenant in tail in possession to have the money paid to him, the court is not authorised by the 44th section of the act in giving him the costs of the disentailing deed, or the other costs attendant on the payment, out of the purchase money.*

THE Bristol and Exeter Railway Company purchased a portion of certain lands in which Mr. Langton was tenant for life with remainder to him in tail. The purchase money was paid into court. Upon Mr. Langton's death, his grandson, H. W. G. Langton, became tenant in tail, and having executed a disentailing deed, presented a petition to have the money paid out of court to him; the petition also asked that the court would order the costs of the disentailing deed, and also all the costs attendant on the money being paid out to be defrayed by the company.

Mr. Kinglake, in support of the petition, contended that the court was authorized to give these costs under the 44th section of the act. The words were these:—"It shall be lawful for the said court to order all the costs, charges, and expenses of, or which may be incurred in consequence of, the purchase or taking or using of such lands by the said company, under and by virtue of this act, and also of the investment of the purchase and compensation money in consolidated or reduced bank annuities or other government securities, or in the re-investment of such purchase and compensation money in land, together with the necessary costs and charges of obtaining the proper orders for such purposes and for the payment of the dividends, interest, and annual produce of such consolidated or reduced bank annuities or other government securities to be paid by the said company out of the monies to be received by virtue of this act; and the said company shall from time to time pay such sums of money for such costs, charges, and expenses as the said court shall direct.

Mr. Oshorn, for the railway company, urged that although the court might order payment of the costs and expenses attending the investment of the money in land, it had no power to make such an order in a case like the present, where the person absolutely entitled applied for payment out of court to himself.

The Vice-Chancellor, after looking at the words of the act, said he was of opinion that on the construction of that section of the act he was not authorized in giving the costs in this particular case.

Vice-Chancellor Knight Bruce.

Jones v. Fawcett. March 10, 1847.

PRACTICE.

*A next friend of a married woman having been twice changed, is allowed to be changed again after decree, although the defendants opposed the application on the ground that the party proposed was not a person of substance.*

THE plaintiff in the suit was a married woman, and after having charged her next friend twice, again applied for the same purpose after the decree. The defendant produced affidavits swearing that the person proposed was not a person of substance.

S. Bell, in support of the application, said that it was not necessary for the next friend of a *feme covert* to be a person of substance, and cited *Pennington v. Alvin*, 1 Sim. & Stu. 264; *Wale v. Salter*, Moseley, 86; and *Dowden v. Hook*, 8 Beav. 399.

Teed and Collins objected that a next friend, though perhaps not a man of substance, should at all events be sufficiently solvent to pay the costs.

The Vice-Chancellor said, that upon the payment of the costs of the application, and upon giving security for costs already incurred, the suit might be prosecuted in the name of the next friend.

Eschequer.

Britt v. Pashley. Trinity Term, June 1, 1847.

JUDGMENT NON OBSTANTE VEREDICTO.

*To a declaration in trespass for breaking and entering the plaintiff's dwelling-house and taking his goods, the defendant pleaded that the dwelling-house was his freehold, and because the goods were in the same he removed them. The plaintiff replied that the dwelling-house was not the defendant's. The cause was referred to arbitration on the usual terms, and the arbitrator found that issue for the defendant. Held, that his finding was final and conclusive, and that the plaintiff could not move for judgment non obstante veredicto.*

THIS was an action of trespass for breaking and entering the plaintiff's dwelling-house, and seizing and taking away his goods and chattels. The defendant pleaded several pleas, the fourth of which justified the trespasses on the ground that the dwelling-house was the defendant's freehold, and because the goods and chattels were in the dwelling-house, encumbering the same, the defendant removed them. The plaintiff replied that the dwelling-house was not the defendant's freehold; upon which issue was joined. The cause and all matters in difference were referred to arbitration on the usual terms, and the arbitrator found the fourth issue for the defendant. A rule nisi was then obtained to enter judgment for the plaintiff *non obstante veredicto* as to the goods and chattels, on the ground that the plea of the defendant's freehold was no answer to the trespass in respect of the goods and chattels.

Humphrey showed cause. The plaintiff cannot move for judgment *non obstante veredicto*. The submission restrains the parties from bringing any action or suit concerning the matters referred to arbitration, which clearly shows that the parties intended that the award should be final and conclusive. *Chowen v.*

*Brown*, 2 Dow. & L. 706; and *Steeple v. Bonsall*, 4 Adol. & E. 950, are in point.

*Whitehurst* and *Miller* in support of the rule. The arbitrator could not have awarded judgment *non obstante veredicto*, he had only power to direct in what way the verdict should be entered up, and the court are to give judgment upon his finding. *Angus v. Redford*, 11 M. & W. 69.

*Alderson*, B. I think this case is entirely governed by *Steeple v. Bonsall*: there Lord Denman says, "The arbitrator's power was complete and final: he had power to do what the court could do, and his award therefore puts an end to the proceedings." In this case the arbitrator gives his judgment for the defendant, and the court gives the same judgment. It is not competent for the plaintiff to bring a writ of error, and if so, he cannot move in arrest of judgment.

*Pollock*, C. B., *Rolfe* and *Platt*, B.s., concurred.

Rule discharged with costs.

## ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

### Common Law Courts.

#### LAW OF PROPERTY AND CONVEY- ANCING.

[The plan of this Analytical Digest enables us conveniently to submit to our readers the several decisions in the Common Law Courts reported during the last few months relating to the Law of Property and Conveyancing and Landlord and Tenant.]

#### AGREEMENT.

See *Lease*, 1, 3.

#### ASSIGNMENT OF LEASE.

*Sale of fixtures, how enforced.*—*A.*, the lessee for years of premises, under a lease containing a stipulation that all improvements made by him were to belong to the lessor at the end of the lease, except any green-house he might erect, bargained with *B.* to assign the lease to him, and to sell him a green-house which he had erected and which was affixed to the freehold, together with the furniture, crops of fruit, and plants therein, for a certain sum. *B.* was let into possession of the green-house and its contents, but, owing to a difficulty in obtaining the lessor's consent, no assignment of the lease was made to him: *Held*, that the contract was an entire one for the assignment of the lease and the sale of the green-house, and that until the lease was assigned *B.* could not be sued by *A.* for the price of the green-house. *Sleddon v. Cruikshank*, 16 M. & W. 71.

#### BANKRUPTCY.

See *Landlord and Tenant*, 4.

#### COVENANT.

1. *What a joint covenant on which all the covenantors must join in suing.*—Covenant by

one plaintiff on a deed executed between plaintiff and *H.* of the one part, and defendant of the other part. The deed recited, that defendant had applied to plaintiff to lend *E.* on mortgage 2,900*l.*, moneys of *H.*, then in plaintiff's hands as trustee for *H.*; that plaintiff had declined, not being satisfied with the security for payment of interest, whereupon defendant offered the after-mentioned covenant as further security, and plaintiff and *H.* being satisfied therewith, agreed to accept the same and advance the 2,900*l.*; that, accordingly, by indenture of mortgage and assignment, to which *E.*, the borrower, was party of one part, and plaintiff and *H.* respectively of other parts, in consideration of 2,900*l.* paid by plaintiff to *E.* out of such moneys of *H.* as aforesaid, a policy of insurance and the dividends on certain bank annuities were assigned to plaintiff, but subject to redemption, &c., with covenants by *E.* to pay principal and interest and the premium on the policy, and a proviso that, in default of payment of any such premium, plaintiff might pay the same, and repay himself the amount out of the bank annuities. After these recitals, defendant, by the first-mentioned deed, in pursuance of the agreement, and in consideration of the premises, and of plaintiff having advanced the 2,900*l.* to *E.*, covenanted, &c., with and to plaintiff, his executors, &c., and also as a distinct covenant with and to *H.*, her executors, &c., that defendant, subject to the proviso after-mentioned, would pay 5 per cent. interest on the 2,900*l.*, until payment of the principal. Provided, and it was declared and agreed between and by the parties thereto, that the covenant was intended only as a security for so much of the interest as the dividends of the bank annuities, &c., after payment of the premiums, should be insufficient to pay; and that, as between defendant and the plaintiff and *H.*, their executors, &c., such part of the dividends as should from time to time remain after payment of the premiums should first be applied in payment of the accruing interest, or so much as the dividends should be sufficient to pay; and that defendant, his heirs, executors, &c., should be liable on the covenant for so much only of the interest as the residue of the dividends should from time to time be insufficient to pay.

*Held*, that *H.* ought to have been joined as a plaintiff by reason of her joint interest, disclosed by the deed, in the subject-matter of the covenant. *Hopkinson v. Lee*, 6 Q. B. 964.

Cases cited in the judgment: *Slingsby's case*, 5 Rep. 18, b.; *Anderson v. Martindale*, 1 East, 497; *James v. Emery*, 5 Price, 529; S. C. 8 Taunt. 245; *Foley v. Addenbrook*, 4 Q. B. 197.

2. *Quiet enjoyment.*—Contract for, when implied.—In 1841, *B.* agreed to let to *A.* for 8 years and a quarter, certain premises, "subject to the same conditions as were mentioned in the memorandum under which *B.* held of *C.*;" and it was further agreed, that "if *C.* was willing to accept *A.* as tenant instead of *B.*, *A.* was willing to take the remainder of the lease

or memorandum from C., and become his tenant." It appeared that C. was tenant to D., and that C.'s term expiring at Christmas, 1844, D. brought ejectment, and turned A. out on the 7th February, 1845.

In an action by A. against B. for this eviction, the declaration, after setting out the agreement and mutual promises, alleged that B. undertook and promised A. that he should and might "quietly use, occupy, and enjoy the premises for the term for which B. had so agreed to let them as aforesaid." *Held*, that no such promises could be implied from the contract set out in the declaration, the contract being subject to conditions the nature of which were not disclosed.

*Quære*, whether a contract for quiet enjoyment can be implied by law from a mere agreement to let. *Messent v. Reynolds*, 3 C. B. 194.

Cases cited in the judgment: *Adams v. Gibney*, 6 Bing. 656; 4 M. & P. 491.

#### CUSTOMARY FREEHOLDS.

The freehold of customary tenements within a manor, though such tenements be not held at the will of the lord, and are transferable by lease and release and admittance, is in the lord; and, therefore, where, in trespass by the customary tenant against the lord, the latter pleads *liberam tenementum*, the derivative and subordinate interest of the tenant ought to be replied. *Thompson v. Hardinge*, 1 C. B. 940.

Cases cited in the judgment: *Doe d. Reay v. Huntingdon*, 4 East, 233; *Doe d. Cook v. Danvers*, 7 East, 299.

#### DEVISE.

"Effects," when sufficient to pass real estate.—Devise as follows:—"I dispose of all my effects as follows: all my household goods, live stock, furniture, plate, wearing apparel, and other effects at this time in my possession, or that may hereafter become my property, unto my wife, J. H. I bequeath to J. P. 200l. to be paid to her at the death of my wife. But if my wife after my decease see fit to marry, her second husband shall have no claim whatsoever, that is, to sell or dispose of any part of the property which now or hereafter may be in my possession; but the above sum of 200l. shall be paid to J. P. at the time of my wife's marriage: *Held*, by *Pollock, C. B.*, and *Platt, B.*, (*Parke B.*, dissentiente,) that a remainder in fee in real estate did not pass by this devise. *Doe d. Haw v. Earles*, 15 M. & W. 450.

Cases cited in the judgment: *Camfield v. Gilbert*, 3 East, 510; *Doe v. Langlands*, 14 East, 370; *Marquis of Lichfield v. Horncastle*, 2 Jur. 610; *Doe d. Hick v. Dring*, 2 M. & Selw. 448.

#### DISTRESS.

See *Landlord and Tenant*, 1, 2.

#### EJECTMENT.

1. *Landlord and Tenant*.—1 G. 4, c. 87.—The stat. 1 G. 4, c. 87, s. 1, enabling landlords to recover possession of premises unlawfully held over by tenants, does not apply to the case

where a tenant holds under a lease, which has not expired by lapse of time, but a right of re-entry is claimed for non-performance of the covenants. *Doe d. Cundey v. Sharpley*, 15 M. & W. 559.

2. *Two of three executors*.—Two of three co-executors may recover lands of their testator in ejectment on a joint demise. *Doe d. Stace v. Wheeler*, 15 M. & W. 623.

#### EXECUTOR.

*Use and execution*.—A declaration for use and occupation against executors, charging them in respect of certain premises held by them as executors under a demise to their testator, but not alleging any occupation by them, is good under 11 G. 2, c. 19, as sufficiently charging them *de bonis testatoris*. *Atkins v. Humphrey*, 3 D. & L. 612.

Cases cited in the judgment: *Piners v. Judson*, 6 Bing. 206; 3 M. & P. 497.

And see *Ejectment*, 1.

#### FISHERY.

See *Lease*, 2.

#### FIXTURES, SALE OF.

See *Assignment of Lease*.

#### FREEHOLDS, CUSTOMARY.

See *Customary freeholds*.

#### INCLOSURE.

*By lessee for benefit of lessor*.—Lessee for lives of a farm inclosed from an adjoining extra-parochial waste, over which there was a right of common in respect of his farm, some small pieces of land near but not actually contiguous to the farm. The lessor was not lord of the waste. *Held*, that in the absence of evidence showing a contrary intention, it was to be presumed that the lessee made the inclosures for the benefit of his lessor, to belong to him as part of the farm at the determination of the lease.

*Held*, also, that such presumption was not rebutted by the fact that the lessee, during the lease, made a conveyance of these inclosures to his son in fee, which, however, was not delivered, nor followed by any possession.

By writing indorsed on the lease the lessee agreed that all the inclosures made by him upon the said waste should be surrendered up to the lessor, his heirs, &c., at the end of the lease, and that the lessee should pay to the lessor, his heirs, &c., the sum of 6d. annually, as an acknowledgment for the same: *Held*, that this was an admission on the part of the lessee that he had made the inclosures for the benefit of the lessor. *Doe d. Lloyd v. Jones*, 15 M. & W. 580.

#### LANDLORD AND TENANT.

1. *Distress*.—*Exemption*.—*Goods in hands of commission agent for sale*.—To a plea in trover for a carriage, alleging that it was taken on the premises of B. as a distress for rent due from him, plaintiff replied that B. was a coach-maker and a commission agent for the sale of carriages, and exercised that trade on the said

premises, and was employed by plaintiff, in the way of his said trade and business, for certain commission, to expose for sale and sell the carriage on the the said premises, and plaintiff had delivered the carriage to B. for the purpose that he might there expose for sale and sell the same for plaintiff in the way of his said trade and business for certain commission, and B. had the same on the premises for that purpose, and the same remained thereon to be managed and dealt with, sold and exposed for sale, as aforesaid, in the way of B.'s said trade and business, and not otherwise, until the time of the distress.

*Held*, that goods in the hands of a commission agent for sale in the way of his business are exempted from distress; and (on special demurrer) that the exemption was here sufficiently pleaded. *Findon v. M'Laren*, 6 Q. B. 891.

Case cited in the judgment: *Adams v. Grane*, 1 Cro. & M. 380; 3 Tyr. 326.

2. *Distress*.—In trover for household furniture, the defendant pleaded that he took the goods as a distress for rent. Replication, that, after the rent became due, and before the distress in the plea mentioned, the defendant took goods of the plaintiff other than those in the count mentioned, as a distress for the arrears of rent, the said goods being liable to a distress for the said rent, and of sufficient value to satisfy it; and that the defendant could and might have satisfied the arrears, &c., thereout, yet that he wrongfully and vexatiously, and without excuse, refused and neglected so to do, &c.

*Held*, a good answer to the plea; for, summing the rent to remain due, still the landlord could not, under the circumstances, take a second distress.

Rejoinder, that the goods first seized were not of sufficient value to satisfy the arrears of rent, and that the defendant, before the making of the second distress, lawfully abandoned and put an end to the first, and withdrew from possession, and that the rent so distrained for remained wholly due and unsatisfied.

Surrejoinder, that the goods and chattels in the replication mentioned were of sufficient value to satisfy the arrears of rent: *Held*, that if the rejoinder could be read so as to make the insufficiency of the goods distrained the ground of abandoning the distress, the averment of insufficiency was material, and the surrejoinder traversing it is good; but that, if it could not be so read, the rejoinder was bad, as not showing any lawful ground for relinquishing the first distress and taking a second. *Dawson v. Cropp*, 1 C. B. 961.

3. *Surrender by operation of law*.—*Implication of tenancy*.—*W. H.*, being tenant from year to year to Lady *H.*, died, leaving his widow in possession. *J. H.* some time afterwards took out administration to the deceased; but the widow continued in possession, paying rent to Lady *H.*, with the knowledge of *J. H.*, who never objected to such payment, or made

any demand of rent: *Held*, first, that there was no evidence of a surrender by operation of law, so as to create the relation of landlord and tenant between Lady *H.* and the widow; secondly, that there were no circumstances from which a tenancy from year to year for administration could be presumed. *Doe d. Hull v. Wood*, 14 M. & W. 682.

Cases cited in the judgment: *Thomas v. Cook*, 3 B. & Ald. 119; *Richardson v. Langridge*, 4 Taunt. 128.

#### 4. *Proviso for re-entry in case of bankruptcy*.

A lease for years contained a proviso for re-entry, in case the lessee "should at any time during the term commit any act of bankruptcy whereupon a commission or fiat in bankruptcy should issue against him, and under which he should be duly found and declared a bankrupt." The lessee, being a trader, committed an act of bankruptcy, on which a fiat issued against him, and he was by the commissioners found and declared a bankrupt; but the petitioning creditor's debt on which the fiat was founded was proved by *A.* and *B.*, as partners, whereas it was due to *A.*, *B.*, and *C.*, as partners. *Held*, by *Pollock*, C. B., and *Platt*, B., (*Parke*, B., dissentiente.) that the lessee was not duly found and declared a bankrupt within the meaning of the proviso. *Doe d. Lloyd v. Ingleby*, 15 M. & W. 465.

And see *Ejectment*; *Inclosure*.

5. *Property tax paid by tenant*.—Where a tenant pays property tax assessed on the premises, and omits to deduct it in his next payment of rent, he cannot afterwards recover the amount as money paid to the use of the landlord. *Cumming v. Bedborough*, 15 M. & W. 700.

6. *Constructive tenancy*.—*Notice to quit*.—A furnished house, it appeared, had been taken by the defendant for three lunar months, ending the 1st of August, 1846, and the plaintiff's receipt for the rent due for the period, dated the 10th of August, was inclosed to the defendant in a letter stating the plaintiff's conclusion that the defendant would continue to hold the house as before. On the 24th of August, however, the defendant required the plaintiff to take charge of the house, and on the 3rd of Sept. offered to give up the keys to him and pay the rent due; to which, on the 5th Sept., the plaintiff, in reply, expressed his readiness to receive the keys, but said he would consider the defendant as responsible for the rent until "the expiration of his time." *Held*, that this was evidence from which to infer a weekly tenancy, and that a sufficient notice to quit had been given by the defendant.

*Seem*, that a notice to quit was not in such a case requisite. *Town v. Campbell*, 33 L. O. 454.

#### LEASE.

1. *Agreement for lease*.—Agreement in substance as follows:—"Proposals for letting the *M.* and *G.* farms, in *H.* Quantity, 130 acres. Term, 12 years, determinable," &c. "Rent, 162*l.* To farm the arable land upon the four-

course system, &c. All other covenants, except as above altered, contained in a draft lease, dated December 18<sup>th</sup>, 1824, granted by W. 91. to J. W. 11. " June 3<sup>rd</sup>, 1835. Agreed to the above rent, provided the house and buildings are put into tenable repair on a plan to be mutually determined upon and finally settled within one month from the above date." Signed by the landlord and the party intending to take.

*Held*, not a present demise, because the terms were to take effect only upon the performance of a condition, and it was not ascertained when the tenancy was to commence. *Doe d. Wood v. Clarke*, 7 Q. B. 211.

Cases cited in the judgment *Stanforth v. Fox*, 7 King 590; *Doe dem. Phillip v. Benjamin*, 9 A. & E. 644; *Gore v. Lloyd*, 12 M. & W. 463.

2 *Fishery — License* — A corporation, by a written document, purporting to be an order of a court of the corporation held for the conservancy of the fishery, granted a license to certain dredgermen to dredge and take the oysters during the oyster season. *Held*, that this did not operate as a demise of the fishery putting the corporation out of possession. *Mayor of Colchester v. Brooke*, 7 Q. B. 339.

3. *Determination of yearly tenancy by contract for purchase* — On the 25th October, 1843, the plaintiff, the defendant, and M, entered into an agreement, by which, after reciting that M was tenant to defendant of a house, at a rent of 25/ a year, and had agreed to let it to plaintiff at a rent of 20/ a year, from 24th June, 1844 at which time defendant agreed to exonerate M. from his tenancy on his paying all rent up to that day, and to accept the plaintiff as tenant from that period at the said rent of 20/ a year, M agreed to let, and plaintiff to take, the house from the date of the agreement to the 24th June then next, at the rent of 20/ a year, and M agreed to find all materials, except lath, to put up a partition wall, &c., plaintiff finding lath and labour. And plaintiff agreed to take the house of defendant from the 24th June, at the rent of 20/ a year, and to give or take six months' notice to quit the premises, and defendant agreed to exonerate M. from his tenancy on the said 24th June, on his paying all rent due to that time. Immediately after the execution of this agreement, M. let plaintiff into possession of the premises. On the 4th March, 1844, defendant agreed to sell the house to the plaintiff, but this agreement was not carried into effect. *Held*, 1st, that the instrument of 25th October, 1843, amounted to a lease of the premises by defendant to plaintiff from 24th June, 1844, 2ndly, that it was not affected by the subsequent agreement for the sale of the premises. *Tarte v. Darby*, 15 M. & W. 601.

Cases cited in the judgment *Doe d. Gray v. Benthall*, 4 M. & W. 701.

(Discontinued)

-1852 *Deeds*, 12.

## NOTICE TO QUIT

1. Notice was given to a tenant from year to year, holding from Martinmas to Martinmas, to quit "on the 13th day of May next, or upon such other day or time as the current year for which you now hold will expire." The notice was dated and served on 21st October. *Held*, had. *Doe dem. Lord Huntingtower v. Clifford*, 4 D. & R. 248, (disapproved of); *Doe dem. Mayor of Richmond v. Morphet*, 7 Q. B. 577.

2. *Determination of tenancy without notice*. — Tenant from year to year gave his landlord notice to quit, ending at a time within half a year. The landlord at first acquiesced, but ultimately refused to accept the notice; the tenant quitted according to his notice, and the landlord entered and did some repairs. *Held*, that the tenancy was not determined. *Bessell v. Landsberg*, 7 Q. B. 638.

Cases cited in the judgment *Johnstone v. Hudson*, 4 B. & C. 922.

3. *Stamp* — By a memorandum of agreement, dated the 23rd June, 1842, made between A, as agent for and on behalf of the churchwardens of the parish of St. M., (not naming them) of the one part, and B of the other part, it was agreed (provided a licence could be obtained from the lord of the manor, and upon B. putting the premises into repair,) that the churchwardens should grant a lease to B. for 21 years from Midsummer-day then next, under the clear yearly rent of 30/; such lease to contain covenants for payment of rent and taxes, and to repair, insure, not to commit waste, &c., and all other usual and proper covenants &c., and B agreed to accept such lease, and execute a counterpart &c., and that, until such lease and counterpart should be granted, the said yearly rent should be payable and recoverable by distress or otherwise, in like manner as if such lease and counterpart had been executed.

*Held*, that this instrument was properly stamped as an agreement.

*Held*, also, that the tenancy thereby created, whether a tenancy from year to year, (which the court thought it was,) or a tenancy at will, was properly put an end to by a notice to quit and deliver up possession, given by persons acting as agents for C. and D., who were churchwardens at the time the agreement was made and B. let into possession, notwithstanding the notice purported also to have been given on behalf of the churchwardens and overseers in office when the notice was served, and did not state to whom the possession was to be delivered up.

The stat. 59 G. 3, c. 12. & 17, does not apply to copyholds. *Doe d. Bailey v. Foster*, 3 Q. B. 215.

## QUIET ENJOYMENT.

See *Covenant*, 2.

REAL ESTATE.

See *Demise*.

"*REENTRY*."

See *Landlord and Tenant*, 4.

## SALE OF FIXTURES.

See *Assignment of Lease*.

## SHARES, SALE OF.

See *Vendor and Purchaser*.

## STAMP.

See *Notice to quit*.

## SURRENDER.

See *Landlord and Tenant*, 3.

## USE AND OCCUPATION.

*Purchaser let in under a contract which failed*.—Where the vendee of an estate sold by auction has been suffered to enter upon and hold the premises while the title was under investigation, and the contract has afterwards been determined for want of title, the vendor cannot, on these grounds only, recover for use and occupation, although a jury find that the occupation has been beneficial. *Winterbottom v. Ingham*, 7 Q. B. 611.

And see *Executor*.

## VENDOR AND PURCHASER.

1. *Sale of shares in mining company.—Rescinding contract.—Condition precedent*.—Plaintiff agreed to purchase of defendant shares in a mining company, established under a deed of settlement, and sent a form of transfer to defendant for his execution. The deed required, that on transfer of shares, the intended proprietor should be approved of by the directors. Defendant executed and returned the transfer, and sent also a certificate (according to the provisions of the deed) verifying defendant's title to the shares.

Plaintiff, on receiving the transfer, paid for the shares; but, before such payment, the directors passed a resolution, (unknown to plaintiff till after the payment), stating that defendant had commenced an action against the company, and that no transfer of shares standing in his name should be allowed while such action was pending. The directors never objected to plaintiff as a proprietor; and the defendant denied their power to stay a transfer on the ground above stated. While the transfer was suspended, shares fell in the market, and plaintiff brought assumpsit for money had and received, to recover back the purchase money: *Held*,

1st, That the action lay; for that defendant, as vendor, was bound to obtain the assent of the directors, and do all that was necessary to vest the shares in the plaintiff.

2ndly, That the fact of their having fallen in value was no objection to the plaintiff's rescinding the contract, since he never had the shares at all, and therefore had received no part of the consideration for his purchase.

3rdly, That although defendant might be entitled to a return of the certificate and instrument of transfer, these were only collateral to the contract and subject matter of the sale; and restoration of them was not a

precedent to the plaintiff's bringing this action. *Wilkinson v. Lloyd*, 7 Q. B. 27.

Case cited in the judgment: *Scurfield v. Gowland*, 6 East, 241.

2. *Action avoided by employment of puffer*.—Where a sale by auction is advertised or stated by auctioneer to be "without reserve," the employment by the vendor of a puffer to bid for him, without notice, renders the sale void, and entitles the purchaser to recover back his deposit from the auctioneer. *Tharrett v. Haines*, 14 M. & W. 367.

Cases cited in the judgment: *Howard v. Castle*, 6 T. R. 642; *Wheeler v. Collier*, Moo. & Mal. 123.

## WAY.

*Private.—What included in general right of passage*.—Case for obstructing a right of way between two specific termini over a close called the Terrace Walk. The way was claimed as appurtenant to a messuage, in general terms, without reference to any obligation to repair. On the trial of an issue joined on a traverse of the right of way, the easement proved was a right of way to pass backwards over every part of the close, and not merely between the termini specified in the declaration; and it was shown, that the easement was enjoyed under a grant to D., his heirs, tenants, and assigns, and to certain other persons, "he, they, and every of them, from time to time, contributing and paying a rateable share and proportion towards repairing and amending the Terrace Walk."

*Held* no variance, the easement proved being only larger than the easement alleged, and not different in kind: *Held*, also, that the obligation to repair was not in the nature of a condition precedent, and need not be alleged in the declaration.

The easement was granted in 1675; there was evidence, that for 10 years next before the commencement of the action, part of the way claimed had become public.

*Held*, not necessary to state in the declaration that such part had become public. *Duncan v. Louch*, 6 Q. B. 904.

Cases cited in the judgment: *Gray's case*, 5 Rep. 78, b.; *Anon*, 3 Stark. Ev. 909 (m.)

## THE EDITOR'S LETTER BOX.

WE are obliged to a subscriber at Haverfordwest. The course of preceeding he refers to is very disreputable and unfair towards the profession, and must ultimately meet its due punishment.

We shall devote as much space as may be requisite to the Rules of Practice and Decisions in the County Courts. At present a separate *ry*. We shall incorporate whatever may be really useful within these pages, and not burden our subscribers with collateral works.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, OCTOBER 2, 1847.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

### HISTORICAL SKETCHES OF THE PROFESSION.

#### No. 3. THE INNS OF COURT.

It is scarcely possible to ascertain the precise origin of the Inns of Court and Chancery. We search in vain for any act of the legislature, either in its collective capacity, or in any of its separate branches—or any ordinance of the state—or any royal charter—or any public record, wherein their first establishment is set forth, or their authority recognised. They seem to have originated some time before the date of any remaining evidence of their existence. We can, indeed, pronounce with some confidence regarding the time when they did not possess their present "local habitations." It was about the year 1345 that the buildings of the Knights Templars appear to have been first appropriated to the students and practitioners of the law; but prior to that time—probably a century—there seem to have been several legal associations within the walls of the city, but of which the memorials are imperfect and uncertain. There is no difficulty in tracing the establishment of our several universities, or the various colleges of which they are respectively composed. We are also able to fix the exact period of our ancient municipal corporations. So, also, we can refer to the constitution of our several courts of justice, whether stationed at Westminster, or scattered through the various counties, hundreds, boroughs, and manors. Seeing all this, it is very remarkable that no date can be assigned to the establishment of those "ancient and honourable

societies," which now for many centuries have exercised the exclusive power of selecting what individuals or classes of the community they please for admission into their society,—of calling whom they please to the bar, and endowing them with the monopoly of practising in every court throughout the kingdom from the High Court of Parliament to the humblest tribunal.

It is not only difficult to fix the date of the Inns of Court collectively, but also to assign the order of precedence amongst them individually. We purpose in these papers to offer only some occasional fragments of professional history, and for the present shall resort to such *documentary evidence* as we have been able to collect relating to the period when these respective societies obtained possession of the several *Innes* or *Hostells* in which the study of the law was anciently promoted, but wherein it has been for a long time neglected. We shall place them in order of date, without regard to their present rank or position, and in a subsequent paper shall state the several orders and regulations made by the benchers for the admission of members and the government of their respective societies.

It is well known that in early times the knowledge and administration of the laws were almost exclusively possessed by the clergy. The lower classes were altogether ignorant and uneducated; the higher were engaged in warlike exercises. For a long time there was *no middle class* corresponding with that numerous and powerful body



in the present age; but the gradual increase of the trading, and afterwards of the commercial, ranks in towns and cities, ultimately enabled the people to restrain the power both of the church and the nobles.

From a document which we shall presently cite, it appears that the citizens of London, so memorable for their spirited exertions in favour of political freedom, were not less distinguished for their love of justice and their promotion of the study of the law.

It appears that in or prior to the year 1244, several schools had been set up in the city for reading and teaching the laws. Henry the 3rd thought fit to have them restrained by proclamation, as appears by this record, about the 28th of his reign :

"Commandment is given to the mayor and sheriffs of London, that they cause proclamation to be made through the whole city, and firmly forbid, that no one should set up schools in the said city and teach the laws there for some time to come; and if any shall set up such schools there, they cause them to cease without delay. Witness the King at Basing, December 2."

This is a very remarkable state paper, the circumstances of which we trust some of our learned fraternity will investigate amongst the city archives. From this time until the year 1292 we find no other record relating to the study or practice of the law. In that year the following ordinance was made regarding "attorneys and lawyers," which may here be stated, though not directly referring to the Inns of Court.

Edward I., in the 20th of his reign, "did especially appoint John de Mettingham (then Lord Chief Justice of the Court of Common Pleas) and the rest of his fellow-justices (of that court) that they, according to their discretion, should provide and ordain, from every county, certain attorneys and lawyers of the best and most apt for their learning and skill, who might do service to his court and people; and that those so chosen only, and no other, should follow his court, and transact the affairs therein, the said king and his council then deeming the number of seven score to be sufficient for that employment; but it was left to the discretion of the said justices to add to that number, or diminish, as they shall see fit."

In the reign of Edward 3, there is express mention of these legal seminaries,

(and it is the first which occurs,<sup>b</sup>) in a demise from the Lady Clifford of the house near Fleet Street, called *Clifford's Inn*.

In the same reign mention is again made of such inns or hotels in a *quod ei deforciat* to an exception taken. It was answered by Sir *Ric. de Willoughby* (then one of the justices of the Common Pleas), and William Skipworth (afterwards also one of the justices of that court), "that the same was no exception in that court, although they had often heard the same for an exception, amongst the *apprentices in hostells or inns*."

According to Dugdale, there is a tradition that in times past there was one Inn of Court at Dowgate called *Johnson's Inn*, another in Fewter Lane, and another in Paternoster Row; which last is endeavoured to be proved because it was next to St. Paul's church, where each lawyer and serjeant at his pillar heard his client's cause, and took notes thereof upon his knee, as they do in Guildhall to this day; and that after the serjeants' feast ended, they do still go to St. Paul's in their habits, and there choose their pillar whereat to hear their client's clause, (if any come,) in memory of that old custom. Some of these inns are thus described by Stowe :—

"There is in and above this citie a whole university as it were of students, practisers or pleaders, and judges of the laws of this realme, not living of common stipends as in other universities it is for the most part done, but of their owne private maintenance, as being altogether fed either by their places or practice, or otherwise by their proper revenues, or exhibition of parents and friends; for that the younger sort are either gentlemen, or sons of gentlemen, or of other most wealthy persons. Of these houses there be at this day fourteen in all, whereof nine doe stand within the liberties of the citie, and five in the suburbs thereof.

"There was sometime an inne of sarjeants in Oldborne, as ye may read of *Scroope's Inne*, over against Saint Andrew's Church."

"There was also one other inne of chancery, called *Chester's Inne*, for the neereness to the Bishop of Chester's house, but more commonly termed *Strand Inne*, for that it stood in Strand Street, and neere unto Strand Bridge without Temple Barre, in the liberty of the Dutchie of Lancaster. This inne of chancery, with other houses neere adjoining, were pulled downe in the reign of Edward the Sixth, by Edward Duke of Somerset, who in place thereof, raised that large and beautiful house, but yet unfinished, called *Somerset-house*.

"There was moreover, in the reign of King

<sup>a</sup> The earliest statutory regulation of attorneys was in 1235, viz., the Statute of Merton, 20 Hen. 3, c. 10. See p. 390, *ante*.

<sup>b</sup> Herbert's *Antiq.* 167.

<sup>c</sup> This appears to have been one of the city inns, or schools of law.

Henric the Sixt, a tenth house of chancery, mentioned by justice Fortescue in his booke of the Lawes of England; but where it stood, or when it was abandoned, I cannot finde."<sup>4</sup>

### THE TEMPLE.

In 1345, in the 18th year of the reign of Edward the 3rd, the mansions of the *Templars*, which had been granted to the Knights of St. John of Jerusalem, were *demised* for the rent of 10*l.* per annum, to certain *students of the common law*, who are supposed to have removed from Thavies' Inn, in Holborn.

According to Dugdale, the Inns of Chancery were so called because they were anciently *Hospicia* for the clerks of chancery, and he conjectures *Thargies* Inne, near St. Andrew's Church, Holborn, to be the same as that mentioned in the Fine Roll of 11 Edw. 3.<sup>c</sup>

### CLIFFORD'S INN.

In the same year (1345), 18 Edw. 3, after the death of Robert de Clifford, his widow let the messuage called Clifford's Inn to the students of the law, or *apprenticis de banco*, as they were then called, (meaning the lawyers of the Common Pleas,) as appears by record:

"Isabell quæ fuit uxor Roberti Clifford messuagium unipartium quod Robertus Clifford habuit in parochia S. Dunstani west, in suburbio Londoni, &c., tenuit et illud dimisit post mortem dicti Roberti *apprenticis de banco*, pro 10*l.* annualim, &c., anno 18 Edwardi tertii inquisitis post mortem Roberti."

Clifford's Inn afterwards fell into the king's hands, and first by lease, and subsequently by a grant in fee farm to Nicholas Sulyard, Esq., principal of this house, and a benchler of Lincoln's Inn, in the reign of Henry 6th, Nicholas Guybon, Robert Clyche, and others, the then seniors of it, and in consideration of 600*l.* and the rent of 4*l.* per annum, it has ever since continued to be a mansion for lawyers.

### LINCOLN'S INN.

There seems little doubt that Lincoln's Inn ranks next in antiquity to the Temple; but the date of any deed showing the *Inn* to be in the possession of a society of lawyers is not met with till the reign of Henry the 8th. It is stated, however, in Herbert's Antiquities of the Inns of Court, (p. 289,) that

"Robert de Wihtz, afterwards called Saint Richard, was the next occupier of Chichester

<sup>d</sup> Probably another of the city inns or hostells.

Thavies Inn also was considerably within the city walls.

House after Bishop Nevil; about which period both that mansion and the deserted house of the black friars became appropriated to the *study of the law*; but in what particular way does not appear. Tradition reports, that Henry Lacy, the great Earl of Lincoln, who in the next age had a grant by patent from King Edward I. of 'the old Friar House juxta Holborn, being a person well affected to the study of the laws,' assigned the professors of it, this residence, but we are not told whether by gift or purchase. From this nobleman, however, it derived the name of Lincoln's Inn, which it still retains."

To the Earl of Lincoln's estate on this spot was soon afterwards added the greater part of that possessed by the Bishop of Chester, who afterwards (but at what particular time does not appear) leased it to the *students of the law*, reserving a certain rent and lodgings for themselves on their coming to London; one of which students, Francis Sulyard, resided there till the 27th of Henry 8. In that year Robert Sherborn, then Bishop of Chichester, made a new lease of it to William Sulyard, the son of Francis Sulyard, usher of the bed-chamber to King Henry 8, and likewise a student of the same house for 99 years, for the rent of 6*l.* 13*s.* 4*d.*; this lease ended Michaelmas 1634.

### STAPLE INN.

In the reign of Henry 5, and probably before, Staple Inn, anciently belonging, it is supposed, to the wool merchants or staplers, became an Inn of Chancery,—the society still possessing a manuscript of the orders and constitutions made at that period. It was then held by lease.

The first grant of the inheritance of it to the ancients of Gray's Inn, from John Knighton and Alice his wife, daughter of John Chapwood, was by indenture of bargain and sale, dated 10 November, 20 Henry 8. On the 4th of June, 20 Jac. 1, Sir Francis Bacon, knight, then Lord Verulam, and Viscount St. Alban, enfeofed Sir Edward Moseley, knight, attorney of the Duchy of Lancaster, Sir Henry Yelverton, and others, the ancients of Gray's Inn, of this seminary, by the name of "Staple Inne," and one garden thereunto adjoining, with all and singular their appurtenances, in times past belonging to John Knighton, gentleman, and Alice his wife, situate in the parish of St. Andrew's, Holborn, in the suburbs of London; which messuage, &c. the said Francis Lord Verulam, lately had, together with John Brograve, Esq., attorney to Queen Elizabeth, of the Duchy of Lancaster, Richard Munger, William Whyskins, and others, then deceased, of feoffment of Sir Gilbert Gerard, knight, then Master of the Rolls, Ralph Brereton, Esq., and William Porter, gentleman, as by their said deed, dated 18 Maii, 32 Elizabeth, more fully appeareth, to have and to hold to the said Sir Edward Moseley, and others, their heirs and assigns, to the only use and behalf of the same Edward, Henry, and their heirs and assigns for ever."

## CHESTRE OR STRAND INN.

In the reign of Henry 5, Occleve the poet is said to have studied the law at "Chestre Inne," which is the only circumstance known concerning it. It is presumed by Strype to have been built on ground belonging to the bishops of Chester;

To one of whom, Roger de Mulnet, or de Molend, called also Longspée, Roger, named the Amner, by his deed, dated 1257, gave and confirmed "a parcel of land and buildings lying in the parish of St. Mary-le-Strand, without London, towards Westminster; and the same to hold to the said Roger and his successors by the yearly rent of 3s. at Easter." For the purchase of this the bishop gave 20 marks of silver.

## LYON'S INN.

Lyon's Inn, an appendage of the Inner Temple, appears to have been a place of considerable antiquity from the old books of the steward's accounts, which contain entries made in the time of King Henry 5. How long before that period it was an Inn of Chancery is uncertain. It has been for many years defunct as an Inn of Chancery,

## BERNARD'S INN.

Bernard's Inn was anciently called Mackworth Inn, and was given by Thomas Atkins, citizen of London, one of the executors of John Mackworth, Dean of Lincoln, in 32 Henry 6, to the Dean and Chapter of Lincoln, and their successors for ever. It is called in the record the *second* Inn of Chancery belonging to the above dean and chapter. There is a curious circumstance mentioned in Stowe's Annals, which shows the existence of this and other Inns of Chancery.

"In the 32nd of Henry 6, a tumult betwixt the gentlemen of the Innes of Court and Chancery, and the citizens of London, hapening in Fleet Street, in which some mischief was done; the principals of Clifford's Inne, Furnival's Inne, and Barnard's Inne, were sent prisoners to Hartford Castle."

## CLEMENT'S INN.

It appears that Clement's Inn is first mentioned as an Inn of Chancery for the education of the students of the law in the time of Edward 6, as appears from the book of entries from the Record of Mich. 19 E. 4, fol. 61, *titulo, Misnomer*; where the defendant, to show that he was not named of the right place of his abode, pleaded thus:—

"Dicit, quod tempore impetrationis brevis, fuit de hospicio de Clement's Inne, in parochia

S. Clementis Dacorum, extra barram Novi Templi, Lond. in comitatu Middlesexie; quod quidem hospicium est, et tempore ante impetrationis brevis, et diu ante, fuit quoddam hospicium hominum curie legis temporalis, necnon hominum consiliariorum ejusdem legis."

In the year 1486 (2 Henry 7) Sir John Cantlowe, knight, by a lease bearing date the 20th of December, in consideration of xL. marks fine, and 4l. vis. vii. yearly rent, demised it for 80 years to William Elyot and John Elyot, in trust, as may be presumed, for the students of the law.

## GRAY'S INN.

This Inn takes its name from the Lords Gray of Wilton. Its antiquity does not rank so high in the history of the Inns as probably it is entitled to, on account of the absence or loss of some of the earliest documents relating to the "Hostell" which they originally occupied. We must confine ourselves to the evidence as we find it. We have already noticed, in regard to Staple Inn, that the first grant of that mansion was made to the ancients of Gray's Inn, in the reign of Henry the 8th, and it appears that the prior and convent of Shene obtained leave of Henry 8, that Thomas Pigot and Richard Broke, Serjeants-at-Law, John Heron, Esq., Roger Lupton, Clerk, Godfry Toppys, and Thomas Arture, might grant

"The mannour of Portpole, with appurtenances, four messuages, four gardens, one croft, eight acres of land, and xs. rent with the appurtenances with the advouson of the same chanteries, upon the said mannor belonging unto the said prior and convent of Shene; to have and to hold to them and their successors, in part of satisfaction for that cl. per annum land, which they had license from King Edward 4 to purchase."

The prior and convent of Shene being thus possessed of the premises, demised them to the students of the law for the annual rent of 6l. 13s. 4d.; at which rent they were held of that monastery till the dissolution, when, becoming the property of the crown, a grant was made by the king in fee farm, as is evident from the treasurer's accounts, 18 Nov., 32 Henry 8, where entry is made of the above-mentioned rent being paid to the king's use."

## NEW INN.

It is said that the site of New Inn, about the year 1485, was occupied as a common inn or hostelry for travellers and others, and was called, from its sign of the Virgin Mary, "Our Lady Inn." "It became first an hostell for students of the law," says Dugdale, "(as the tradition is,) upon the removal of the students of the law from

an old Inn of Chancery, situate in Seacole Lane, a little south from St. Sepulchre's church, called *Saint George's Inn*,<sup>f</sup> and was procured from Sir John Fineux, knight, sometime Lord Chief Justice of the King's Bench, for the rent of 6*l.* per annum, by the name of New Inn."

This tradition is further confirmed by Stowe, who states that

"In St. George's Lane (near St. Sepulchre's church) on the north side thereof remaineth yet an olde walle of stone including a piece of ground by Seacole Lane, wherein (by report) sometime stood an inne of chancery; which house being greatly decayed, and standing remote from other houses of that profession, the company removed to a common hostery, called of the signe "Our Lady Inne," not far from Clement's Inne, which they procured from Sir John Fineux, Lord Chief Justice of the King's Bench, and since have held it of the owners, by the name of the New Inne, paying therefore sixe pound rent by the yeere as tenants at their owne will; for more (as is said) cannot be gotten of them, and much less will they be put from it!"

#### FURNIVAL'S INN.

From the daughter and heir to William Lord *Furnival*, in the time of Henry 4, the inheritance of Furnival's Inn descended to the Earl of Shrewsbury; and in consideration of 120*l.*, the then Earl, by his deed, bearing date the 16th day of December, 1 Edward 6, sold it to Edward Gryffin, Esq., then Solicitor-General to the King, William Ropere, and Richard Heydone, Esqs., and their heirs, to the use of the Society of Lincoln's Inn. This is no longer an Inn of Chancery.

#### THAVIES INN.

In the reign of Edward 6, one Gregory Nicholls, citizen and mercer of London, being possessed by inheritance of the property of this mansion, granted it, in the fourth year of the same prince, to the benchers of Lincoln's Inn, for the use of *students of the law*; which society soon afterwards constituted it one of their Inns of Chancery, and vested the government in a principal and fellows, who were to pay, as an acknowledgment to the mother house, the annual rent of 3*l.* 6*s.* 4*d.*

An Inn of this name is mentioned by Dugdale to have been occupied by students of the common law, prior to their removal to the Temple. If so, this grant from

Lincoln's Inn must have been a re-constitution of the society. It has long, however, ceased to exist as an Inn of Chancery.

We have thus given a brief account, in chronological order, of the establishment of these learned and honourable societies in their several Inns or Hostells; and shall hereafter proceed to show the mode and manner in which they exercised their several important functions.

### INADEQUATE FEES OF PRACTITIONERS IN THE COUNTY COURTS.

SOME of the mischiefs anticipated from the inadequacy of the fees allowed to practitioners in the County Courts have already been made manifest. We cannot do better than quote a leading article from the *Times* of 16th September, in which the subject is ably considered. Here our readers will find the question treated with regard to the *interests of the public*,—which on all these occasions is evidently connected with that of the profession.

"One of the most formidable evils there seemed reason to apprehend was, that the lowness of the fees allowed to professional men under the new act would cause an irruption of harpies, under the name of *agents*, to prey upon the suitors, whose cases would not be sufficiently remunerative to the respectable practitioner. A gross instance of this kind was noticed under the head of "Police" in our paper of Tuesday.<sup>g</sup> A person, who called himself an agent, was charged with having defrauded a poor servant girl of half-a-crown, under the pretence of assisting her to that *cheap and expeditious justice* which the County Courts profess to afford to those who resort to them. Upwards of a month since, the plaintiff—a domestic out of place, to whom, of course, the speedy recovery of a debt due for wages was of the most vital importance—applied at the Brixton County Court for a summons against her late master for 1*l.* 2*s.* 6*d.*, which she alleged that he owed to her. Before she could stir a step, a plaint was handed her to fill up, and it would seem that no pains were taken by the officers of the court to facilitate this operation, which, though simple enough, might naturally embarrass a servant girl, if no assistance or explanation were offered her. The small functionaries engaged in subordinate positions about courts of limited jurisdiction are apt to evince an utter indifference to anything beyond the barest execution of their duty, and they even seem to take a malicious pleasure sometimes in the perplexities they might easily relieve by a

<sup>f</sup> It seems evident that St. George's Inn must also be included in the legal seminaries of the city.

little gratuitous courtesy. Civility, however, as it costs nothing, and, consequently, brings nothing, is most sparingly supplied by these underlings, who think it a privilege to thwart the public, whose servants they are, and who will do nothing which the duties of their place may not positively require. In the case we are now noticing, it appears that the complainant had a piece of printed paper placed in her hands, and was told to fill it up,—upon which the self styled “agent” thought it a good opportunity to go forward and offer his services. If the officer of the court is merely to place a paper into a plaintiff’s hand without giving the applicant any information or help in putting the document to its proper use, *it is a farce to say that a suitor can proceed on his own behalf without the expense of a legal practitioner.* It would be a parallel case to provide a steam-packet fitted with all the necessary apparatus, and pretend to save the passengers the expense of a captain by telling them to steer themselves, for that the machinery was all at their service if they chose to make use of it. A County Court professing to administer justice without professional intervention is a mere delusion, unless it contains within itself not only the means of cheaply and rapidly determining claims, but of assisting suitors in taking the proceedings that may be required.

“We do not doubt that the judges of the new tribunals would be ready in every case to carry out the intention of the legislature by making the practice of the courts as clear and intelligible as possible to the meanest comprehension; but if preliminary difficulties occur, which the subordinate officers will be at no pains to remove, the new system cannot have a fair trial. We do not believe that the servant girl who sought to recover 1*l.* 2*s.* 6*d.* due to her for wages would so readily have been snapped up by the “agent” who eased her of half-a-crown, if the inferior officers of the court had been at the least trouble to put her in the way of obtaining for herself the justice she required. It appears that the clerks refuse to fill up the claims, and declare that they would be liable to a penalty for doing so—a pretence that is utterly absurd, for, if the plaintiffs were bound to perform this duty for themselves, any one not able to write would be excluded from the advantages of the County Courts, without that professional advice, which it is the professed object of the measure to do away with altogether.

“If the legislature has thought proper to discourage the employment of legal advisers in the County Courts, the officers of those tribunals should at least take care to prevent the places of professional men from being usurped by a set of persons whose interference is wholly irregular. We regret that an example could not be made of the agent who had received half-a-crown for the purpose of taking out a summons and had not appropriated the money to the purpose for which he had obtained it. The whole case is not, by any means, a favourable specimen of the working of the County

Courts Act, but we hope the circumstances are uncommon, and that exposure may render it easy to guard against such occurrences for the future. We find a plaintiff to whose position a cheap and speedy mode of obtaining justice seemed peculiarly applicable; yet, at the end of a whole month, after going to the County Court, she finds herself minus half-a-crown, and as far as ever from recovering the money due to her.”

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### CANAL CARRIERS.

10 & 11 VICT. c. 94.

An Act to amend an Act to enable Canal Companies to become Carriers upon their Canals. [22nd July, 1847.]

1. 8 & 9 Vict. c. 42.—*Recited act incorporated with this act.*—Whereas an act was passed in the 9 Vict., intituled “An Act to enable Canal Companies to become Carriers of Goods upon their Canals,” whereby, upon the recital that by divers acts of parliament railway companies had been empowered to convey upon their railways all such goods, wares, merchandize, articles, matters, and things as might be offered to them for that purpose, and that greater competition for the public advantage would be obtained if similar powers were granted to canal and navigation companies, it was enacted, that it should be lawful to the proprietors, trustees, or undertakers of any canal, river, or navigation, or their respective committees, directors, or managers, or their superintendents or other agents, to carry as common carriers for their own profit upon their respective canals, rivers, or navigations, and upon any railways or tramways belonging thereto, and upon other canals, rivers, and navigations communicating directly or indirectly therewith, all such goods, wares, merchandize, articles, matters, and things as might be intrusted to them for that purpose, and to purchase, hire, and construct, and to use and employ, any number of boats, barges, vessels, rafts, carts, waggons, carriages, and other conveniences, and to establish and furnish haulage, trackage, or other means of drawing or propelling the same by steam, animal, or other power, or for the purpose of collecting, carrying, conveying, warehousing, and delivering such goods, wares, merchandize, articles, matters and things: And whereas the proprietors, trustees, and undertakers of many canals, rivers, and navigations are unable to avail themselves of the provisions of the said recited act by reason of their having no statutory power of raising money to be applied to the purposes of the same, and it is expedient that the said recited act should in that respect be amended, and that powers should be granted to such proprietors, trustees, and undertakers to raise money for the said purposes, but that object cannot be effected without the aid of par-

liament: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the said recited act shall be incorporated with this act.

2. *Canal companies empowered to borrow money as prescribed by 8 & 9 Vict. cc. 16 and 17, and apply the same to the purposes of recited act. Saving rights of existing creditors.*—And be it enacted, That it shall be lawful to the proprietors, trustees, and undertakers of any canal, river, or navigation who shall have in the manner provided by the said recited act adopted the powers and provisions of the same to borrow on mortgage or bond in the manner or as nearly as may be in the manner prescribed by the Companies Clauses Consolidation Act, 1845, or the Companies Clauses Consolidation (Scotland) Act, 1845, as the case may be, any sum or sums of money not exceeding in all at any one time one-tenth part of the paid-up capital stock of such proprietors, trustees, or undertakers respectively, and to apply the monies so raised to the purposes of the said recited act, or any of such purposes: Provided always, that the monies so borrowed shall not be applied to any other purposes whatsoever: Provided also, that the monies so to be borrowed, together with any monies otherwise borrowed by any such proprietors, trustees, or undertakers as aforesaid, shall not in all exceed one-third part of the paid-up capital of such proprietors, trustees, or undertakers respectively; and that no mortgage or bond to be granted for any monies borrowed in virtue of this act shall prejudice or affect any security previously granted for any monies borrowed by virtue of any other act or acts of parliament relating to any such canal, river, or navigation.

3. *8 & 9 Vict. cc. 16 and 17, incorporated with this act.*—And for the purposes of this act, be it enacted, That such of the clauses and provisions of the Companies Clauses Consolidation Act, 1845, and of the Companies Clauses Consolidation (Scotland) Act, 1845, respectively, as the case may be, as relate to the borrowing of money by companies on mortgage or bond, and to the conversion of borrowed money into capital, shall be incorporated with this act.

4. *Companies not exempt from provisions of any future general act.*—And be it enacted, That nothing herein contained shall be construed to exempt any canal or navigation company who have adopted or shall adopt the powers of the said recited act from the operation of any general act regulating the manner of charging tolls and other charges upon canals or navigations in respect of passengers, goods, animals, articles, and things of a like description that may be passed in the course of this or any future session of parliament.

5. *Act may be amended, &c.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament.

## PARLIAMENTARY PRIVILEGE FROM ARREST.

THIS subject, which we took occasion to notice on the dissolution of the last parliament,\* before the recent question arose regarding one of the honourable members for Finsbury, continues to engage much of the public attention. Referring to our last two articles at pp. 449 and 469, we may here notice that the Court of Common Council of the city of London are about to petition parliament on the subject. From no quarter could the question so well originate as in the city of London, where the discharge of all obligations,—still more of judgment debts,—is of such vital importance.

The following is the notice of motion given by Mr. Anderton, on the 16th September. We are glad that the subject is in the hands of so able and respectable a member of the profession:—

“That this court do petition the House of Commons, that the members of that house shall not, by virtue of their being so, be privileged from arrest, upon writs of execution, issued against them by their creditors, for enforcing the payment of their judgment debts.”

## VISITS TO THE OLD LAWYERS.

MR. JUSTICE GOULD.

THE journey of the judges, 80 years ago, from York to Durham was long and tedious, and the public at Durham had often a long time to wait. On one occasion Mr. Justice Gould, a learned and worthy judge, advanced in age, arrived at Durham late in the day, thoroughly fatigued, and was hurried to the court to open it:—a long detail of commissions and lists of magistrates and other official business took place; the learned judge fell asleep; the list went on until the officer cried out “John Thompson;” when a man in the body of the court, with a Durham accent, in answer loudly said, “My Lord, *John Thompson is dead*.” the judge awaking out of his sleep said, “no excuse at all, fine him forty shillings!!!”

On another occasion, the Bishop of Durham who entertained the judges at Durham Castle, during the assizes, got up from the dining table and advancing to Mr. Justice Gould, who enjoyed a glass of wine, said to him and the small party, about ten, “I am going to the afternoon prayers at the cathedral, I shall be absent about half an hour; I have left you, my lord, a dozen of wine:” the judge looking earnestly on the bishop said, “My lord, do you **STINT** me?”

\* See the number for 7th August.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

## Lord Chancellor.

*Newton v. Jones.* May 22nd, 1847.

## PAYMENT OF EXECUTOR'S LEGACY INTO COURT.

*The amount of a legacy to an executor who never acted, paid to him by the acting co-executor and residuary legatee, who afterwards died, and appointed the former to be one of his executors, will not be ordered to be paid into court for the purpose of securing an annuity bequeathed by their testatrix, and which the acting executor during his life had duly paid, but had neglected to secure.*

Mr. Wood, with whom was Mr. Twells, stated, that this motion sought to discharge an order made on the 26th of March last, by Vice-Chancellor Knight Bruce. An annuity had been bequeathed to the plaintiff by a certain testatrix, who had also bequeathed a legacy of 500*l.* to the defendant, and the residue of her property to his co-executor, Mr. Richardson. The latter paid all the debts and legacies, and continued to pay the annuity regularly until his decease, but had neglected to secure it by an investment of any kind. By his will he appointed the defendant and another his executors, against whom the present bill was filed by the annuitant, stating the above facts, and praying that Jones and the other executor of Richardson might be declared jointly liable to pay the plaintiff's annuity. Jones put in his answer admitting the payment and receipt of his legacy, but denying that he had ever acted as executor of the testator, and also admitting assets of his testator, Richardson. A motion was then made by the plaintiff for payment into court of the amount of the legacy, as assets, and his Honour made the order now complained of, directing the defendant Jones to pay into court one-half of the amount of the said legacy, which it was calculated was about the then value of the said annuity. By a subsequent order obtained by the defendant on the 4th instant, one-fourth of the said sum of 500*l.* was directed to be paid on the 25th instant, and another fourth at the end of three weeks from the latter date. The learned counsel contended, that such an order could not be sustained, as the bill raised no case against the defendant Jones, and they cited *Lord Shipbrook v. Lord Hinchinbrook*, 11 Ves. 252.

Mr. Cooper supported the Vice-Chancellor's order. [*Lord Chancellor.* An executor who is also a legatee admits that he has received a legacy. Is that a sufficient ground for ordering it to be paid into court?] By applying to the court for further time within which the money is to be paid, and for liberty to pay it by instalments, the defendant has recognised the

propriety of the order. [*Lord Chancellor.* The application was made under the exigence of the order, and was merely for a mitigation of the sentence.]

Mr. Speed followed Mr. Cooper, and cited *Harding v. Harding*, 16 Law Jour. (Chanc.) 179. [*Lord Chancellor.* In that case there might have been debts, as the accounts had not been taken. Here you state that all the debts and legacies, except this annuity, have been paid.] It is not equitable that one executor shall retain 500*l.* because he had a legacy to that amount left him. An executor has no priority over other legatees. In this case the defendant had neglected to see the annuity secured.

The Lord Chancellor. It does not appear to me that this suit raises the ground upon which the question can be decided. The bill is not framed for that purpose. It states that all debts and legacies have been paid, except the plaintiff's annuity. I think the order of Vice-Chancellor Knight Bruce is wrong, and must be discharged.

Costs of the first order costs in the cause. No costs of the order for extending time of payment.

## Rolls Court.

*Robinson v. Norton.* July 25th, 1847.

## DISMISSAL OF BILL.—BANKRUPT.

*A motion to dismiss a bill for want of prosecution after the plaintiff has become bankrupt is irregular.*

Mr. Bagshawe moved to dismiss the bill in this cause for want of prosecution. It appeared that the plaintiff had become bankrupt.

Mr. Elmsley, contra, objected, that the notice was irregular; the defendant should have moved, that the assignees might proceed with the suit within some short time, or that the bill might be dismissed.

Mr. Bagshawe contended, that the court would make an order to this effect on the motion to dismiss.

But Lord Langdale refused the motion with costs.

## Vice-Chancellor of England.

*Eldrid v. Whitefoot.* July 30, 1847.

## PAYMENT OF MONEY OUT OF COURT.—PETITION.—PARTIES.

*On a petition for payment of money out of court to parties entitled to shares in the same, certain other parties, also entitled, appearing by counsel, although not parties to the petition, allowed to participate in the order, they contributing pro ratâ to the costs.*

In this case a sum of money, portion of a legacy of 200*l.*, was standing in the name of the Accountant-General to the separate account of certain parties. A petition was presented



by some of the parties, praying for payment out of court to them of their shares of the fund.

Mr. Shapter appeared for the petition.

Mr Lewis appeared for Thomas Eldrid and Edward Eldrid, who were also entitled to portions of the fund, and asked, that their shares might be ordered to be paid to them. They were not parties to the petition, neither were they mentioned in the prayer.

The Vice-Chancellor made the order, Thos. Eldrid and Edward Eldrid contributing *pro rata* to the costs.

Note.—This order is constantly refused at the Rolls, it being considered necessary there, either to have the prayer of the petition altered, or a separate petition presented by the parties seeking to be included in the order.

Vice-Chancellor Knight Bruce.

Gascoyne v. Lamb. July 9th, 1847.

PRACTICE.—EVIDENCE.—CREDITOR'S SUIT.  
—DECREE.

*In a creditor's suit, where no evidence was given in the course of the plaintiff's debt, the usual decree was made on an affidavit of the testator's signature to the promissory note on which the debt was founded.*

DAVID ROWLEY, who died intestate in 1836, leaving his heir at law and customary heir, an infant, was indebted on a promissory note to the plaintiff in the suit. He died seized of copyhold property, and the plaintiff having filed a creditor's bill, the administrator admitted the debt, but there was no proof of it in the cause.

Mr. Malins appeared for the plaintiff; and Mr. Rasch for the infant heir, submitted that some evidence should be given of the consideration, or some proof of the debt, and cited *Keaton v. Lynch*, 1 Y. & C., C. C. 437; and *Whittaker v. Wright*, 2 Hare, 310.

His Honour made the usual decree on an affidavit of the signature of the intestate to the note.

Exchequer.

Dyer v. Green. Trin. Term, 3 June, 1847.

STAMP—DEED—SCHEDULE.

*Upon the trial of an interpleader issue, the plaintiff gave in evidence a bill of sale and schedule. The bill of sale assigned to him all the property in a certain house, stating that the chief articles thereof were enumerated in the schedule. The schedule was not in any way annexed to the deed. Held, that the schedule was admissible in evidence without a stamp, the deed being sensible without the schedule.*

THIS was an interpleader issue to try the property in certain goods. At the trial before Pollock, C. B., at the Middlesex Sittings in Easter Term, the plaintiff tendered in evidence a bill of sale and schedule. The bill of sale assigned to him all the property in a certain

house, "the chief articles whereof are enumerated in a schedule." The schedule was unstamped and not in any way annexed to the deed. It was objected that the schedule was not admissible in evidence for want of a stamp. The learned judge being of that opinion, nonsuited the plaintiff. A rule *nisi* having been obtained to set aside the nonsuit,

Wells showed cause. The bill of sale could not be received in evidence without the schedule, as both were executed at one time, and the former refers to the latter. The schedule is part of the deed, and in fact they form but one instrument. *Weeks v. Maillardet*, 14 East, 568; *Burgh v. Preston*, 8 T. R. 483. The only goods which passed by the bill of sale were those enumerated in the schedule.

W. H. Watson appeared to support the rule, but was not called on.

Alderson, B. This case is distinguished from *Weeks v. Maillardet*, because there the deed was insensible without the schedule, for it was a conveyance of all the articles in the schedule; here the deed may be considered as enumerating the articles, by describing them as all the articles in a certain house.

Rolfe, B., and Pollock, C. B., concurred. Rule absolute.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### Common Law Courts.

## PRINCIPLES OF THE COMMON LAW AND GROUNDS OF ACTION.

AGENT.

*Personal liability.—Special verdict.*—Declaration, in assumpsit, alleged a promise by defendant to pay plaintiff a certain debt, and to arrange with him the time and mode of paying it. Issue being joined on *non assumpsit*, a special verdict was found, which set forth a letter from defendant to plaintiff, containing the following passage, relied upon by plaintiff as the substantive contract:—"Your bill of charges in this matter, amounting to 527*l.* 5*s.*," (the sum claimed in the action.) "I also undertake (on behalf of Messrs. Esdaile & Co.,) to pay, and will arrange with you the time and mode." An earlier part of the letter contained an unqualified promise by defendant to pay plaintiff another sum; and in letters written shortly before, and set out in the verdict, the plaintiff and defendant named E. & Co. as the parties to the negotiations, and mentioned the debt now claimed as "to be settled and paid by E. & Co.," but spoke of the negotiations as to other debts with reference merely to plaintiff and defendant.

Held, by the Court of Exchequer Chamber, that the first-mentioned letter, upon the face of it, and especially when connected with the other passages above-mentioned, imported, as to the sum claimed, only an undertaking by defendant as agent for E. & Co.; and that, in default of the special verdict directly stating,

or finding facts from which it resulted by necessary implication, that there was a want of authority in defendant to give such undertaking, or any excess of his authority in giving it, defendant was entitled to judgment. *Downman v. Williams*, 7 Q. B. 103.

Case cited in the judgment: *Appleton v. Bicks*, 5 East, 548.

And see *Contract of Sale*.

#### AGREEMENT.

*Satisfaction of debt by giving negotiable security of smaller amount.*—To an action for 1,000*l.* money had and received, and 1,000*l.* due on an account stated, the defendant pleaded, as to 500*l.*, parcel of the sum in these two counts mentioned, that the account was stated of and concerning the said sum of 500*l.*, parcel, &c., in the first count mentioned, and no other; that, after the said causes of action arose, the plaintiff commenced, in the Tolzey Court of Bristol, an action of debt for the recovery of the said sums of 500*l.* and 500*l.*; that the defendant disputed the said supposed debt, and denied that he owed or was liable to pay it, or that the plaintiff could recover it; and thereupon, to terminate the said dispute and difference, and the claim and demand of the plaintiff in the said action, and finally to determine the same, the plaintiff and defendant agreed that the said action should be settled by the defendant making and delivering to the plaintiff three promissory notes, for payment to the plaintiff, or order, of the sums of 125*l.*, 125*l.*, and 50*l.*, and that the plaintiff should accept and receive the same in satisfaction and discharge of the said sums of 500*l.* and 500*l.*, and all damages and costs, and that the plaintiff should discontinue the said action. Averment, that the defendant made and delivered to the plaintiff the said three promissory notes, and that the plaintiff accepted the same in full satisfaction and discharge of the said sums of 500*l.* and 500*l.*, and the damages and costs, &c. The replication denied the making of the agreement stated in the plea.

The defendant proved, in support of this plea, that the plaintiff had sued him in the Tolzey Court, for the 500*l.*, when it was agreed between them that the defendant should give, in settlement of the action, three promissory notes, two for 125*l.* each, and one for 50*l.*, payable to the plaintiff or his order, which he did; and the following memorandum was then indorsed by the plaintiff's attorney on the writ served in that action:—"This action is settled by the defendant giving three promissory notes, viz., one for three months, 125*l.*; one for four months, 125*l.*; and one at twelve months, 50*l.*; upon payment of which, I undertake to deliver to F. S., Esq., [the defendant's attorney,] the several papers in my possession in reference to this action. J. P. H." The defendant paid the two notes for 125*l.* each when due, but refused payment of the note for 50*l.*

Held, 1st, That the above plea was a good answer to the action in point of law; for that the acceptance of a negotiable security may be

in law a satisfaction of a debt of a greater amount.

2ndly, That the plea was proved by the going of the promissory notes in pursuance of the agreement, and that it was not necessary to show that they were all paid at maturity. *Stibree v. Tripp*, 15 M. & W. 23.

Cases cited in the judgment: *Pinnell's case*, 5 Rep. 117; *Cumber v. Wane*, 1 Str. 426; *Harcastle v. Howard*, in *Heathcote v. Crookshanks*, 2 T. R. 24; *Sard v. Rhodes*, 1 M. & W. 153; *Longridge v. Dorville*, 5 B. & Ald. 117; *Andrew v. Boughey*, *Dyer*, 75, n.; *Thomas v. Heathorn*, 2 B. & C. 477; *Wilkinson v. Byers*, 1 Ad. & E. 106; 3 New. & M. 853; *Reynolds v. Pynhowe*, Cro. Eliz. 429.

#### ASSUMPSIT.

1. *Money had and received.*—Cattle belonging to A., imported into this country, died on the voyage, and were afterwards disposed of to B., a soap-boiler, who was to make what he could of them, and, after deducting expenses, to render an account to A. An account was afterwards rendered, which was alleged to be fraudulent.

Held, that an action of *indebitatus assumpsit* for goods sold and delivered would lie for the balance due from B. to A., and it is for the jury to decide whether more was due to A. than what appeared on the face of the account given by B. *Pool v. Cowan*, 33 L. O. 550.

2. *Work and labour.*—A. is let into the possession of a house belonging to B., under a parol agreement, that if A. will lay out a sum of money in repairs, B. will grant him a lease of the house for 12 years. A. completes the repairs, and B. then refuses to grant the lease.

Held, that there was not evidence to show that the agreement was rescinded, nor that the work was done at the request and for the benefit of the defendant, so as to support an action of *indebitatus assumpsit* for work and labour; and the court set aside a verdict which had been found for the plaintiff, and granted a new trial. *Hopkins v. Richardson*, 33 L. O. 70.

#### BILL OF EXCHANGE.

1. *Notice of dishonour.*—A bill of exchange was drawn by H., indorsed by him to B., and B. to C., in whose hands it was dishonoured. C.'s attorney gave notice of dishonour in due time to A., but stated therein, by mistake, that he was directed by B. (from whom he had no authority) to apply for payment of the bill: Held, that the notice of dishonour was sufficient, notwithstanding the misrepresentation, the only effect of which was to give A. every defence against C. that he could have had if the notice had really been given by B. *Harrison v. Ruscoe*, 15 M. & W. 231.

Cases cited in the judgment: *Chapman v. Keane* 3 A. & E. 103; *Woodthorpe v. Lawes*, 2 M. & W. 109.

2. *Re-indorsement.*—*Circuity of action.*—Assumpsit by indorseees against indorser of a bill of exchange, drawn by W. & Co. on H., indorsed by W. & Co. to the defendant, and by the defendant to the plaintiff.

**Plea:** that *W. & Co.* are the plaintiffs, and no other persons; that the plaintiffs and no other persons are the makers of the bill, and the persons to whose order it was payable, and the persons who indorsed to the defendant, and who are liable to him as such indorsers, in the event of payment of the bill by him. **Replication;** that, at the time of the drawing of the bill, *H.* was indebted to the plaintiffs in the amount of the bill, and thereupon it was agreed between the plaintiffs and *H.*, that in consideration that *H.* would procure the defendant to indorse and become surety as indorsee to the plaintiffs of the bill, they would give time to *H.* for payment of the debt: that the plaintiffs, in pursuance of this agreement, drew and indorsed the bill as in the declaration mentioned, and the defendant, for the accommodation of *H.*, indorsed it to the plaintiffs, with the intent of thereby becoming surety as indorser to the plaintiffs of the bill; that *H.*, in further pursuance of the agreement, delivered the bill so indorsed to the plaintiffs, and the plaintiffs gave time to *H.*, and that no part of the said debt had been paid to them.

**Held, 1st,** That the facts disclosed in the replication showed a sufficient title in the plaintiffs to sue the defendant on his indorsement to them, notwithstanding their previous indorsement to him.

**2ndly,** That the replication showed a sufficient consideration for the defendant's promise to pay the plaintiffs the amount of the bill.

**And 3rdly,** That it was not a departure from the declaration. *Wilders v. Stevens*, 15 M. & W. 208.

Case cited in the judgment: *Bishop v. Hayward*, 4 T. R. 470.

**3. Notice of dishonour by post.**—If a notice of dishonour of a bill of exchange be posted by the holder in due time, he is not prejudiced if, through mistake or delay of the post-office, it be not delivered in due time. *Woodcock v. Houldsworth*, 16 M. & W. 124.

**4. Notice of dishonour.**—In an action by the indorsee against the indorser of a bill of exchange, it was alleged in the declaration to be accepted, payable at the London Joint-Stock Bank, but in the notice of dishonour the bill was described as payable at the London and Westminster Joint-Stock Bank, which was shown to be a different bank from the London Joint-Stock bank. **Held,** that the notice of dishonour was sufficient. *Bromage v. Vaughan and Bevan*, 33 L. O. 188.

#### BOND.

**1. Alternative condition.**—**Held,** that an action of debt lies at the suit of *A.* against *C.* on a bond by which *C.* acknowledges himself to be bound to *A.* in 100*l.* to be paid to *A.* or *B.*

**Held,** also, that *A.* may declare upon such a bond without noticing *B.*, although the alternative mode of payment appears by the bond being set out upon oyer, and although the declaration negatives payment to *A.*, but is silent

as to non-payment to *B.* *White v. Hancock*, 2 C. B. 830.

**2. Construction.—Principal and surety.**—The defendant entered into a bond to the plaintiffs, in the penal sum of 250*l.*, which recited, that whereas *R. J.* had agreed to become tenant to the plaintiffs of a public-house, and it was stipulated, on the letting, that *R. J.* should take from the plaintiffs all the ale, spirits, &c., which should be consumed on the premises, and that he should become bound with a surety to pay for all ale, &c., which he should receive from the plaintiffs, to the amount of 50*l.*, before he should have a fresh supply from them of the same, and so should continue to do from time to time, so long as he should continue tenant of the plaintiffs; and that when he should cease to be such tenant, the surety should be liable to the plaintiffs for such sum, not exceeding 50*l.*, which the said *R. J.* should or might then owe to the said plaintiffs for ale, &c., supplied by them to him. The condition then was, that if *R. J.* should from time to time pay to the plaintiffs for all ale, &c., which he should from time to time have had from them, to an amount not exceeding 50*l.*, before he should have had a fresh supply of the same, and when he should become indebted to them in that sum; and if the said *R. J.* should pay the plaintiffs all sum and sums of money which he should owe them for ale, &c., not exceeding 50*l.*, when he should cease to be their tenant, the bond to be void: **Held,** that under this bond, the surety was not liable for any sum, not exceeding 50*l.*, which *R. J.* might owe the plaintiffs at the end of the tenancy, although he might have had from them a further supply of ale, &c., at a time when he owed them 50*l.* and upwards. *Seller v. Jones*, 16 M. & W. 112.

#### CARRIER.

In an action of assumpsit against the proprietor of a cab for the loss of luggage, the promise of the defendant was alleged to be, "safely and securely" to convey the plaintiff and his luggage: **Held,** that this allegation was sustained by the promise implied by law to use due and reasonable care in that behalf, as the allegation must be construed with reference to the character of the bailee sought to be charged. *Ross v. Hill*, 3 D. & L. 788.

Cases cited in the judgment: *Coggs v. Bernard*, 2 Ld. Raym. 909; 1 Salk. 26; 2 Salk. 733; 3 Salk. 11; *Harris v. Cestar*, 1 C. & P. 636.

#### CHARTER-PARTY.

**Construction of.**—A charter party provided, that the ship should sail to any safe island or islands on the south-west coast of Africa, agreeably to instructions which were to be given to the captain in due time by the charterers or their agents, and there load from the factors of the charterers a full cargo of guano, or other lawful produce, which the charterers bound themselves to provide, and being so loaded, should proceed therewith to a safe port in the United Kingdom, and deliver the same,

on being paid freight at 3*l.* 18*s.* per ton, the freight to be paid *on unloading and right delivery of the cargo*, one third in cash, on arrival at port of destination, and the remainder by approved acceptances at three months, or cash equal thereto, &c. And it was further agreed, that, in case the charterers' agents should be unable to furnish a cargo of guano at the ports or places therein provided, they should have power to send the vessel to any other safe port or ports, place or places, for the purpose of obtaining a cargo of guano in the manner aforesaid, or of other goods, &c., in which case they were to pay for such service as hire for the said vessel, after the rate of 15*s.* 6*d.* per ton per month, such pay or hire to commence from the day of the vessel's clearing outwards at the Custom-House, London, and to terminate upon the vessel's return to her port of delivery, as thereinbefore provided for, and the discharge of the cargo. If the freighters' agents intended so to employ the vessel, they were to give the master written notice of such their intention, on production whereof, the freighters engaged to pay the owner, in cash on account, three months' pay for the hire of the vessel, and the balance to be paid on the vessel's return as aforesaid.

The charterers instructed their agent on the south-west coast of Africa that the ship should proceed according to his instructions, and that in case she should not find a cargo, she should proceed where he deemed it likely to procure one. The vessel sailed, pursuant to the charterers' directions, to an island on the south-west coast of Africa, where the agent met her, and informed the captain that there was no guano to be had there, and that he must procure a cargo in Saldanha Bay, (another place on the same coast,) and must proceed to the Cape for a license to load there. The vessel accordingly sailed for the Cape, but being there required to enter into an engagement to sign and hand over bills of lading for the cargo as a security for the charges of the license, the captain refused to do so unless the agent would make the freight payable according to the time employed, instead of according to the weight of the cargo; and the latter accordingly gave the captain notice that he engaged him upon time, according to the latter clause of the charter-party: *Held*, that, under such circumstances, this clause had come into operation, and that the time freight was recoverable.

The vessel, having loaded a cargo of guano at Saldanha Bay, proceeded therewith to England, and, under the charterers' instructions, went to Southampton to discharge her cargo. The charterers wrote to the captain there, stating that, without prejudice to the charter-party, or any dispute connected with the vessel, their wishes were, that it should be landed and warehoused in the Southampton docks in bulk, which was accordingly done: *Held*, that upon such landing of the cargo, the balance of the freight became payable. *Fenwick v. Boyd*, 15 M. & W. 632.

## CONSIDERATION.

See *Guarantee*.

## CONTRACT.

*Construction of.*—A. sells goods to B., to be paid for partly in cash, and the residue by bills at intervals of three months each: The payment of the money and the delivery of the bills do not constitute a *condition*, so as to entitle A. upon non-payment of the money and non-delivery of the bill, to sue as for goods sold and delivered, without waiting the expiration of the credit. Nor can such action be maintained for the amount of the stipulated cash payment.

A.'s remedy is, by special action on the express contract. *Paul v. Dod*, 2 C. B. 800.

## CONTRACT OF SALE,

*Made by party as agent, he being the principal.*—Where the plaintiff made a written contract for the sale of goods, in which he described himself as the agent of A., and the buyer accepted and paid the price of a portion of the goods, and had then notice that the plaintiff was himself the real principal in the transaction, and not the agent of A.: *Held*, that the plaintiff might sue in his own name for the non-acceptance of and non-payment for the residue of the goods. *Rayner v. Grote*, 15 M. & W. 359.

## CORPORATION.

*Merger of franchise.*—A corporation, which had an immemorial right to the oyster fishing in a navigable river, to be managed by certain functionaries and courts of the corporation, became, in 1740, by the ouster of several of its members, unable to continue itself, or to carry on the management of the fishery. In 1763, the corporation was re-incorporated by charter, under the old name, and the charter ratified, confirmed, and restored to it all fisheries, &c.

*Held*, that there having been no actual dissolution, the fishery had never come to the crown, and would therefore be in the corporation as it existed under the new charter.

*Quære*, Whether if the fishery had come to the crown, it could (after *Magna Charta*) have been re-granted by charter. *Mayor of Colchester v. Brooke*, 7 Q. B. 339.

Cases cited in the judgment: *Rex v. Passmore*, 3 T. R. 199; *Rex v. Mayor of London*, 1 Show. 274, 280.

## ELECTOR.

*Liability of returning officer for refusing vote.*—In case against a returning officer, for refusing to admit the plaintiff's vote at an election of a borough member, the first count—after stating the writ and precept for the election—alleged, that the plaintiff was a burgess, that his name was on the register of voters, that he tendered his vote for one of the candidates, and answered in the affirmative the questions authorized by the 6 & 7 Vict. c. 18, s. 81, to be put by the returning officer, and was ready and offered to take the oath prescribed by s. 82; but that the defendant, being returning officer, *wrongfully, fraudulently, and wilfully intending*

to injure the plaintiff, and to hinder and disappoint him of his privilege of and in the premises, refused to permit the plaintiff to give his vote, or allow the same to be entered and recorded, and a burgess was elected, the plaintiff being so excluded from giving his vote. To this count, the defendant pleaded, that the plaintiff was not a burgess of the borough duly qualified or entitled to vote in or at the election therein mentioned: *Held*, that the plea was bad for ambiguity.

The 2nd count—after stating the writ and precept, and that the plaintiff was a burgess and on the register—proceeded to allege that he tendered his vote for one of the candidates; that it was the duty of the defendant, so being such returning officer, to allow such vote to be entered and recorded, and cast up in the poll-books; that he was requested so to do; but that he, contriving and *wrongfully and fraudulently and wilfully and maliciously intending to injure and damnify the plaintiff*, and to hinder and disappoint, and deprive him of the benefit of his right and privilege aforesaid, instead of entering and recording the plaintiff's vote in the poll-books, to the end and intent aforesaid, refused so to receive the same, or to admit and allow the same to be so entered and recorded, to the end and intent aforesaid; but, on the contrary thereof, caused the vote of the plaintiff to be entered in the column of *votes tendered* in the poll-books, and at the close of the poll refused to reckon, include, and cast up, and did not reckon, &c., the plaintiff's vote among the votes given for that candidate; *whereby* the plaintiff was deprived of the benefit of his right to vote at that election.

*Semble*, that the count disclosed a *prima facie* cause of action.

The 3rd count, after stating the writ and precept, that the plaintiff was a burgess and on the register, and that he tendered his vote, alleged that it was the duty of the defendant, as returning officer, to enter the vote on the poll-books without entering into or allowing a scrutiny; but that the defendant, knowing the premises, but contriving and *wrongfully, fraudulently, wilfully, and maliciously, intending to injure and damnify the plaintiff*, and to delay him in the exercise of his privilege of voting, and deprive him of the benefit of his said privilege, *wrongfully* ordered and allowed a scrutiny to be held with regard to the plaintiff's vote, and his right and qualification to vote, and *wrongfully* took upon himself to adjudge and determine, at and after such scrutiny so ordered and allowed, that the plaintiff was not entitled to give, and had no qualification enabling him to give, his vote at that election; *whereby* the plaintiff was delayed, hindered, and obstructed in the exercise of his said privilege of voting, and a burgess was elected for that parliament, the plaintiff's vote being so hindered and obstructed, &c.: *Held*, that this count also disclosed a *prima facie* cause of action, inasmuch as it was possible that the delay arising from the holding of a scrutiny, (which is prohibited by the 6 & 7 Vict. c. 18,

s. 82,) might have had the effect of preventing the plaintiff from exercising his right of voting, and, if so, that the action would be maintainable, the act of the defendant being wrongful, and having caused a particular damage to the plaintiff. *Held*, also, that the words subsequent to the *per quod* amounted to an averment of matter of fact, and were not mere matter of legal inference from the preceding allegations. *Pryce v. Belcher*, 3 C. B. 58.

Cases cited in the judgment: *Blofield v. Payne*, 4 B. & Ad. 410; *Taylor v. Henniker*, 12 Ad. & E. 488; *The Tonbridge Dippers' case*, *Woller v. Baker*, 2 Wills. 422; *Colson and Perry's case*, 2 Roll. Rep. 379; *Mary's case*, 8 Co. Rep. 113.

See notes on this case, p. 498, *ante*.

#### EXTENT.

*Sci. fa.*—*Commission to find debts.*—*Inquisition.*—Upon a *sci. fa.* to recover a sum of money found due to the Crown for duties of Customs by an inquisition taken under a commission to find debts, it appeared on the record, that the commission, which was tested the 21st Feb., and returnable the 15th April, 1843, authorised the commissioners to inquire "whether J. D. is now indebted in any and what sums of money," &c. The inquisition was taken and returned on the 1st March, 1843, and the jury found that S. D. was, *on the day of taking that inquisition*, indebted to the Crown in 262l. 10s., for the duty of Customs on silk imported by him between the 8th and 14th day of Feb., 1841, and that the said sum, and every part thereof, still remained due and unpaid: *Held*, that this finding was good in form, and was warranted by the commission.

The *sci. fa.* was tested on the 30th of March, 1843: *Held*, that its having issued before the return-day of the commission, was a mere irregularity, and not ground of error. *Dean v. Regina*, 15 M. & W. 475.

#### GUARANTEE.

1. *Construction of.*—*Sufficiency of consideration.*—A declaration by A. against B., upon a guarantee stated, that in consideration of advances already made by A., and that A. would from time to time make advances to C., B. promised to pay A. the last-mentioned advances. The consideration on the face of the guarantee was, "in consideration of advances made and to be made by A., or by any other persons of whom A.'s firm might from time to time consist:" *Held*, a variance.

The guarantee was addressed, in the alternative, "To Messrs. A. & Co., or the person or persons for the time being, carrying on the business" of that firm: *Held*, no variance, no change in the firm having in fact taken place, or, that if there were any variance, such variance would be amendable under the 3 & 4 W. 4, c. 42, s. 23.

The breach assigned in the declaration was, that the defendant had not *guaranteed* the payment or *paid*. The defendant pleaded, *inter alia*, that he had *guaranteed* the payment: *Held*, that the words in the breach were not to be understood as used disjunctively, and that proof

that the defendant had executed the instrument of guarantee, did not entitle him to a verdict on that issue. *Boyd v. Moyle*, 2 C. & B. 644.

2. *Consideration*.—*Held*, that no consideration appeared on the following guarantee:—"1843, June 28, Mr. Price; I will see you paid the 5*l.* or 10*l.* worth of leather, on the 6th of December, for Thomas Lewis, shoemaker." *Price v. Richardson*, 15 M. & W. 539.

Case cited in the judgment: *Wain v. Warlters*, 5 East, 10.

3. *Construction of*.—*Liability of guarantor for due payment of bill of exchange*.—Declaration in assumpsit on a guarantee stated, that the defendant promised the plaintiffs to guarantee to them the due acceptance and payment of two bills of exchange drawn by K., being the amount of an invoice of the plaintiffs' of goods shipped by them; and that, as the defendant had not then heard from K. if the invoice had been found correct, the defendant was to have "the reserve customary under such circumstances." The terms of the guarantee were, that the defendants guaranteed the due acceptance and payment of the bills, &c., and it proceeded thus:—"As we have not heard from Mr. K., if your invoice has been found correct, we claim *this reserve*, as customary under such circumstances." It appeared that the invoice was in fact correct: *Held*, that there was no variance. *Ackermann v. Ehreusperger*, 16 M. & W. 99.

3. *Interest*.—A party who guarantees the due payment of a bill of exchange by the acceptor, is liable for interest upon it, if it be not paid when due. *Ackermann v. Ehreusperger*, 16 M. & W. 99.

#### HACKNEY CARRIAGES

*Liability of proprietor of*.—In assumpsit against a cab proprietor, the declaration stated, that the plaintiff hired the vehicle, and that, in consideration of the premises, and that the plaintiff, with his luggage, would become a passenger, and of certain reward, the defendant promised the plaintiff to carry and convey him and his luggage *safely and securely* from, &c., to, &c., and alleged a loss of part of the luggage by the negligence of the defendant's servant: *Held*, that the declaration was sufficient to charge the defendant for a breach of his implied duty to use an ordinary degree of care; the words "safely and securely" not necessarily importing a more extended liability. *Ross v. Hill*, 2 C. B. 877.

Cases cited in the judgment: *Harris v. Costar*, 1 C. & P. 637; *Coggs v. Bernard*, 9 Lord Raym. 909; 1 Com. R. 133; 2 Salk. 785; *Smith's leading Ca.* 82.

#### IMPRISONMENT.

*What is*.—Plaintiff, attempting to pass in a particular direction, was obstructed by defendant, who prevented him from going in any direction but one, not being that in which he had endeavoured to pass. *Held*, no imprisonment.

And this, whether the plaintiff had or had not a right to pass in the first-mentioned direction.

*Per Patteson, Coleridge, and Williams, Js. Dissentiente*, Lord Denman, C. J. *Bird v. Jones*, 7 Q. B. 742.

#### INSOLVENT DEBTOR.

To an action by an indorsee against the acceptor of a bill, the latter pleaded, that before the commencement of the suit, a petition for his protection from process was duly, and according to the statute, presented by him to the Court of Bankruptcy; that afterwards, and before action brought, a final order for protection and distribution was made in the matter of the petition, by J. E., a commissioner of the said court, duly authorized in that behalf; and that the causes of action in the declaration were contracted before the date of filing the petition: *Held*, on special demurrer, that this was a sufficient plea in bar, within the 5 & 6 Vict. c. 116, s. 10. *Cook v. Henson*, 1 C. B. 908.

#### INSURANCE.

*Constructive total loss*.—A policy was effected upon a ship, valued at 17,500*l.*, from China to Madras, whilst there, and back to China. The ship had originally been purchased by the owners for 11,000*l.*, and was, at the time of effecting the policy, together with her stores, seamen's wages, and other matters not constituting her permanent value, of the value to the plaintiffs, of the sum mentioned in the policy. During the voyage, the ship was damaged by the perils of the sea, so as to become incompetent to proceed on the voyage, unless repaired at an expense of not less than 10,500*l.*, and being so repaired, she would have been worth a sum not exceeding 9,000*l.*, which was her marketable value at the time of effecting the policy, and immediately before the damage.

Upon a special verdict finding the above facts, and also finding that a prudent owner, being uninsured, would not have repaired the vessel, and that she was duly abandoned: *Held*, in affirmation of the judgment of the court below, that the underwriters were liable as for a total loss. *Irving v. Manning*, 2 C. B. 784.

Case cited in the judgment: *Allen v. Sugrue*, 8 B. & C. 568; 3 Mann. & R. 9.

#### JOINT-STOCK BANK.

*Partner*.—*Liability of quoad 3rd parties dealing with the firm*.—A. B. C. and D., who carried on business under the firm of G. P. and Co., in 1840 opened an account with a banking company, established under 7 Geo. 4, c. 46; 1 & 2 Vict. c. 96, and 5 & 6 Vict. c. 85. In 1842, A. retired from the firm, but this fact was not advertised in the London Gazette, nor was any alteration made in the pass-book: *Held*, that the mere fact of D., one of the firm of G. P. and Co., being also a director of the banking company (but having as such no share in the management of or interference in the banking accounts), did not amount to notice,—actual or constructive,—to the bank, of the dissolution, so as to discharge A. in respect of a debt subsequently accruing,—a banking company so established, differing in this respect

from an ordinary trading partnership. *Powles v. Page*, 3 C. B. 16.

Cases cited in the judgment: *Porthouse v. Parker*, 1 Campb. 82; *Jacaud v. French*, 12 East, 317; *Steward v. Dunn* 12 M. & W. 664; 1 Dowl. & L. 642, 649.

#### LOTTERY.

To debt for money had and received, the defendant pleaded, that a certain race was about to be run, and that an illegal game called a lottery, not authorized by law or act of parliament, was set up by the defendant for certain subscribers of 1*l.* each, (in the whole amounting to 155,) to be paid to the defendant under regulations in substance as follows:—That the subscriber whose name should be drawn out of a box next after the name of the horse (drawn from another box,) which horse should be placed first in the race, should be entitled to receive from the defendant 100*l.* The plea then alleged that the subscriptions were paid by the plaintiff and others to the defendant, and that the plaintiff, under the regulations, became entitled to the 100*l.*: *Held*, that the plea disclosed a transaction within the prohibition of the Lottery Acts, 10 & 11 W. 3, c. 27, and 42 G. 3, c. 119. *Allport v. Nutt*, 1 C. B. 974.

*Held*, also, that, supposing the transaction to be a bet, it was an illegal bet. *Allport v. Nutt*, 1 C. B. 974.

*Held*, also, that the plea was good in form, as setting up the illegality of consideration by statute. *Allport v. Nutt*, 1 C. B. 974.

See *Thorpe v. Coleman*, 1 C. B. 990.

#### MARRIAGE.

*Assumpsit.* The declaration alleged promise to marry "within a reasonable time after the defendant should be thereunto requested by the plaintiff;" and without averring a request, stated for breach that the defendant had wrongfully married another person. Plea, that the defendant was never requested to marry the plaintiff: *Held*, on special demurrer, that the declaration was good, as showing a breach of contract by the defendant, which dispensed with any necessity for alleging a request: and that the plea was consequently bad. *Short v. Stone*, 3 D. & L. 580.

Case cited in the judgment: *Harrison v. Cagid ux.*, 1 Id. Raym. 386; 1 Salk. 24; 12 Mod. 214.

#### MASTER AND SERVANT.

*Agreement in restraint of trade.*—The plaintiffs agreed in writing with L., that he should serve them for seven years as a crown-glass maker; that he should not during that term work for any other person without their license; that they might deduct from his wages any fine he might incur for breach of their rules; that during any depression of trade he should be paid a moiety of his wages; that if he should be sick or lame, the plaintiffs should be at liberty to employ any other person in his stead, without paying him any wages; that the plaintiffs should pay him, so long as

he should be employed and work as a crown-glass maker, certain wages by the piece, and 8*l.* a year in lieu of house-rent and firing; and that the plaintiffs should have the option of dismissing him from their service on giving him a month's notice or a month's wages. *Held*, that this agreement bound the plaintiffs to employ L. during the 7 years, subject to the above power of dismissal; that there was, therefore, a good consideration for L.'s contract to serve for the 7 years, and the agreement was not in unlawful restraint of trade. *Pilking-ton v. Scott*, 15 M. & W. 657.

Case cited in the judgment: *Hitchcock v. Coker*, 6 Ad. & Ell. 440.

#### MONEY HAD AND RECEIVED.

1. S., the owner of a farm, orally employed defendant to sell it for him. Defendant, without naming the seller, agreed, by written memorandum, to sell the farm to the plaintiff for 2,700*l.*, and gave instructions to an attorney to prepare a contract of sale by S. to plaintiff. Plaintiff paid defendant 100*l.* deposit in part of the purchase-money, and afterwards signed the contract of sale by S. to himself, by which contract he agreed to pay down immediately on its execution 100*l.* as a deposit, for which S. undertook to pay interest at 4 per cent. till the completion of the purchase. The contract was afterwards rescinded for want of title in the seller, S. Defendant, before he had notice of the rescinding, paid S. 50*l.*, and retained the other 50*l.*, though without the consent of S., under an agreement by S. to give him one-half of any amount above 2,600*l.*, which defendant might get for the farm: *Held*, that plaintiff could not recover any part of the 100*l.* from defendant. *Hurley v. Baker*, 16 M. & W. 26.

2. *Legacy—Priority of contract.*—The defendant, as the agent of an executor, wrote to a legatee informing him of his legacy and its amount, and stating that he would remit it in any way the legatee might suggest. He transacted the business necessary for the transfer of the legacy, and remitted to the legatee the amount of the legacy, minus a sum deducted for expenses: *Held*, that the defendant was not liable to the legatee, in an action for money had and received, from the sum so deducted. *Barlow v. Browne*, 16 M. & W. 126.

And see *Assumpsit*, 1.

#### PARTNER.

1. *Liability of quoad 3rd parties dealing with the firm.*—One who takes a share of the profits as such, of a trading concern, thereby becomes a partner as to 3rd persons, on the ground of those profits forming a portion of the fund upon which creditors have a right to rely for payment. Yet the receipt of a percentage upon the gross amount of sales made to certain customers, by the person who recommended such customers, does not constitute him a partner as against 3rd persons.

A, who was concerned in a colliery, in the year 1830, built and stocked a general shop in the neighbourhood, for the purpose of supply-



ing goods to the workpeople, placing *B.* there to conduct the business; *A.* receiving for his own use 7 per cent. upon the amount of the gross sales made to the miners; and *B.* taking all the rest of the profits of the concern, from whatever source derived. *A.*'s name appeared over the shop-door, and in the excise licences; and down to the year 1834, all the goods supplied to the shop were purchased and paid for by or in the name of *A.* In that year it was agreed between *A.* and *B.*, that the latter should thenceforward buy all goods that were required for the shop, and that the former should receive 5 per cent. upon the amount of sales to the miners. After this new arrangement had been come to, *B.*, who had several other shops, opened an account with a bank at Holywell, and, on the failure of the bank in 1839, there was a balance due to the bankers on that account, exceeding 2,000*l.* There was no evidence to show that credit was in fact given to *A.* by the bank, or that they were aware that his name had been placed over the shop-door, or that they supposed him to be a partner at the time the debt was contracted.

In an action by the assignees of the bankers against *A.* and *B.*, to recover the balance, the jury having negatived the existence of an actual partnership between *A.* and *B.*, or that *A.* had, with his own permission, been held out as a partner, the court refused to disturb the verdict. *Pott v. Eyton*, 3 C. B. 32.

Cases cited in the judgment: *Dry v. Boswell*, 1 Campb. 329; *Benjamin v. Porteus*, 2 H. Bl. 590; *Ex parte Hamper*, 17 Ves. 404; *Ex parte Watsun*, 19 Ves. 459.

2. *Surety.—Release.*—Where, on dissolution of a partnership, two of the partners agree, in consideration of a sum of money secured by the bond of a third partner, to pay all the debts, and to release him from all liability as to the joint concern, the third partner becomes, as between the other two partners and himself, a surety only in respect of those debts. *Rodgers v. Maw*, 4 D. & L. 66.

3. The plaintiff and the defendant were partners. They dissolved the partnership, the plaintiff agreeing to take all the debts of the firm upon himself, and to release the defendant from liability, and the defendant giving him a bond for a certain sum payable by instalments. The plaintiff failed to pay a debt due from the firm, whereupon the creditors sued the defendant, and obtained judgment, and issued a *f. fa.* under which the sheriffs seized and sold the defendant's goods, and out of the proceeds paid the debt.

*Semble*, that, in an action on the bond, the defendant was entitled to set-off, as money paid, the sum so paid by the sheriff. *Rodgers v. Maw*, 15 M. & W. 444.

And see *Joint-Stock Bank*.

#### PASSENGER.

*Liability of coach proprietors.*—*A.* contracts with *B.*, a coach proprietor, for three seats in a coach from *F.* to *L.*, namely, two inside and

one outside. When the coach had proceeded about half the journey, *B.* takes up more passengers than he was licensed to carry, whereupon *A.* and the other person inside leave the coach, and the passenger outside, not then being able to obtain the luggage, goes on to the end of the journey.

*Held*, that *B.* was not entitled to recover from *A.* the sum agreed to be paid for the seats, nor was he entitled to recover anything under the *indebitatus* count for work actually performed. *Pickford v. Lucon*, 34 L. O. 181.

#### PATENT.

1. *Liquidated damages.*—By articles of agreement between *A.* and *B.*, after reciting that *A.* had invented a parasol upon a new principle, it was agreed that *B.* should be permitted to manufacture it; and that, if *B.* should, pending the agreement, manufacture parasols without making the stipulated payments, or do anything whatever to prejudice *A.*'s right and title to the invention, he should pay *A.* 100*l.* as liquidated damages.

In case for breach of this agreement, the declaration alleged that *A.* was the proprietor of a new or original design for an article of manufacture, having reference to a purpose of utility, so far as the design was and is for the shape or configuration of such article, that is to say, of a new and original design for the shape and configuration of a parasol, for the purpose of opening and closing the same with one hand, and which design had not before or at the time of registration been published; that such design was duly registered according to the 6 & 7 Vict., c. 65; and that *B.* published a circular stating *A.*'s design to be an infringement of a patent previously granted to *C.*

*B.* pleaded that *A.* was not, before or at the time of the registration, the inventor or proprietor of a new or original design for the shape or configuration of a parasol, not published before or at the time of the said registration, *modo et formâ*. *Held*, that this plea did not raise the question—whether or not the alleged invention of *A.* was the proper subject of a certificate of registration under the stats. 5 & 6 Vict. c. 100, and 6 & 7 Vict., c. 65. *Millingen v. Picken*, 1 C. B. 799.

2. *Trust for foreigner.—Argumentative denial that grantor was true and first inventor.—Sufficiency of specification.*—A patent granted to a British subject, in his own name, for an invention communicated to him by a foreigner, the subject of a state in amity with this country, is not void, although such patent be in truth taken out, and held by the grantee, in trust for such foreigner.

In such case, the grantee is the true and first inventor within this realm, within the stat. 21 Jac. c. 3.

In case for an alleged infringement of a patent so granted, the defendant pleaded that, by an agreement made in France, between the original inventor and the King of the French, the former, for the considerations therein men-

tioned, assigned the invention to the French government, and that, by virtue of that agreement, and by the laws of France, the invention became vested in the King of the French, in right of his crown, who thereby became entitled, by the laws of France, to vend and publish the invention, as well in that country as in Great Britain and Ireland, and in any other country or place where he should think fit, without any license from the inventor, concluding: "wherefore the said letters-patent were and are void," &c.: *Held*, that the plea was bad in substance, inasmuch as it contained no denial of the allegation that the patentee was the true and first inventor within this realm, which is all that is necessary to sustain the validity of the letters-patent, in respect of the granting thereof.

*Held* also, that the circumstance of the original inventor having, for a valuable consideration, parted with his interest in the discovery to a person in France, was no bar to his right to take out a patent for the same invention in this country.

A further plea contained an additional allegation, that the King of the French had openly published and made known the invention, and the manner of performing the same, to the people of France, for the use and benefit of that people, and of all other nations and people in the world, as a free gift and benefaction for the benefit of all mankind, without limitation or restriction, whereby, according to the laws of France, the defendants became and were entitled to use, exercise, and vend the said invention in any country or place, at their free will and pleasure, without the leave, or license, or hindrance of the original inventor, &c.: *Held*, that the plea afforded no answer to the action.

The title described the patent to be for "a new or improved method of obtaining the spontaneous reproduction of all the images received in the focus of the camera obscura." *Held*, that this was sufficiently precise and certain. *Beard v. Egerton*, 3 C. B. 97.

Cases cited in the judgment: *Case of Monopolies*, Darcy v. Allen, Nov. Rep. 178; 11 Co. Rep. 81; *Clothworkers of Ipswich*, Godbolt, 252; *Bloxam v. Elsee*, 1 C. & P. 558; R. & M. 187; 6 B. & C. 169; 9 D. & R. 215; *Chappell v. Purday*, 14 M. & W. 318; *Neilson v. Hartford*, 8 M. & W. 806; *Nickels v. Haslam*, 7 M. & G. 378; 8 Scott, N. R. 97.

#### PRINCIPAL AND AGENT.

See *Agent*; *Contract of Sale*.

#### PRINCIPAL AND SURETY.

*Composition deed.*—*Reserve of remedies against surety.*—The plaintiff, a shareholder in a banking company, became a surety for advances to be made by the company to the defendant. The defendant afterwards executed a composition deed, to which the plaintiff and the banking company were parties, whereby he assigned his property to trustees for the benefit of his creditors: and this deed contained a stipulation for a reserve of remedies against

sureties for the defendant. The plaintiff having been compelled to pay the debt to the banking company: *Held*, that he was entitled to recover back the amount, in an action for money paid, from the defendant. *Kearsley v. Cole*, 16 M. & W. 128.

Cases cited in the judgment: *Exparte Davidson*, 1 Mont. D. & D. 648; *Exparte Gifford*, 6 Ves. 805; *Boulton v. Stubbbs*, 18 Ves. 20; *Exparte Glendinning*, Buck's B. C. 517; *Smith v. Winter*, 4 M. & W. 554; *Nicholson v. Revill*, 4 A. & E. 675; *Cheetham v. Ward*, 1 Bos. & P. 630; *Solly v. Forbes*, 2 Brod. & B. 38; *Lewis v. Jones*, 4 B. & Cr. 515.

See *Bond*, 2.

#### PRIVILEGED COMMUNICATION.

See *Slander*.

#### PROMISSORY NOTE.

*What is.*—The following instrument was held not to be a promissory note:—"Drury v. Vaughan. In consideration of W. Drury not taking any further proceedings in the above action, I do hereby undertake with the said W. Drury, that I will pay unto the said W. Drury 3*l.* 5*s.* every quarter of a year from this day, until the whole of the principal money now due from Messrs. J. & T. Vaughan to Mr. Drury, 26*l.* 1*s.*, with lawful interest for the same from the date hereof, be fully paid and satisfied, and the first of such quarterly payments to become due on the 30th day of October next. It is understood that this undertaking is not to be a release or a discharge of the note signed by Mr. J. Vaughan and Mr. T. Vaughan to the said W. Drury, on the 9th of March, 1840, but as an additional security for the above-mentioned amount now due on such note, with the interest. *Drury v. Macaulay*, 16 M. & W. 146.

#### SHERIFF.

1. A sheriff having applied for relief under the Interpleader Act, a judge directed the goods to be sold, and the money paid into court, to abide the event of an issue between the claimant and execution creditor. A verdict being found for the claimant, he then brought an action against the sheriff for breaking and entering his dwelling-house, and seizing and converting his goods. The court ordered that so much of the declaration as charged the defendant with seizing and converting the goods should be struck out. *Abbott v. Richards*, 3 D. & L. 487.

2. The plaintiff recovered judgment against the defendant for 61*l.*, and a *ca. sa.* issued, indorsed to levy that sum, together with costs, &c. The sheriff having disobeyed a rule of court to bring in the body, an attachment issued against him, which was set aside on payment of costs, and on perfecting special bail. These terms not being complied with, owing to a mistake of the sheriff's officer, a *habeas corpus* issued to the coroner to bring up the body of the sheriff. The sheriff thereupon took out a summons to show cause why, upon his complying with the previous

rifle, and paying the costs of the *habeas*, all further proceedings under it should not be stayed. Before this summons became returnable, the under-sheriff paid over to the plaintiff's attorney the full amount of the penalty of the bail-bond, and the costs. The court made absolute a rule upon the plaintiff to refund to the sheriff the surplus beyond the 61*l.* and costs. *Reg. v. Sheriff of Middlesex*, 15 M. & W. 146.

## SLANDER.

*Privileged communication.*—Plaintiff inquired of defendant if he had accused her of using false weights in her trade. Defendant, in presence of a third person, answered: "To be sure I did. You have done it for years."

*Held*, that the latter words were actionable, and not privileged by reason of the plaintiff's inquiry; the evidence showing that such inquiry was caused by a former statement of the defendant himself. *Griffiths v. Lewis*, 7 Q. B. 61.

Cases cited in the judgment: *Smith v. Mathews*, 1 M. & Rob. 151; *Toogood v. Spyring*, 1 Cro. M. & R. 181. S. C. 4 Tyr. 582; *Padmore v. Lawrence*, 11 A. & E. 380; *Warr v. Jolly*, 6 Car. & P. 497.

## SLAVE, EMANCIPATED.

*Contract for transfer of services of apprenticed negroes formerly slaves.*—Declaration in debt alleged: That, by agreement made, to wit, on the 25th of September, 1834, between plaintiff and defendant, in consideration of 7,800*l.*, payable as after mentioned, plaintiff did sell, assign, transfer, and make over all his right, title and interest in, and to the services and labour of one hundred and fifty-three apprenticed labourers, formerly slaves, belonging to plaintiff, for and during the term of their apprenticeship to defendant, his heirs, executor, or assigns, and engaged to warrant and defend him from all claims and demands on, and, otherwise, as far as was in plaintiff's power, to guarantee the undisturbed possession of, the services of such labourers according to law: and defendant promised to pay plaintiff the 7,800*l.*, in six instalments of 1,300*l.*, at specified annual periods: and it was agreed that, in case of failure in the required payment of any instalment, plaintiff should be entitled to reclaim the services of such labourers during the remaining term of apprenticeship, and the services should revert to plaintiff,—defendant remaining liable for such sums as should be then due for the value or hire of the labour during such period as defendant should have received the services at the rate of 1,300*l.* per annum. Averment, that defendant had the services, to wit, from the time of making the agreement for and during the term of the apprenticeship, and plaintiff was always ready and willing to warrant, &c., and did warrant, &c., and otherwise guarantee, &c., (in the terms of the agreement;) and defendant had undisturbed possession, &c. during the term; but, although defendant paid four

of the instalments, and the time for paying the other two had elapsed, he did not pay, &c.

*Held*, by the Court of Queen's Bench, (on objection taken upon argument of demurrer to a plea,) that it did not appear, and the court would not intend, in the absence of express statements, that the agreement was in any respect contrary to the law of England generally, or to stat. 3 & 4 W. 4, c. 73, s. 10: That if the validity of the agreement depended on section 10, the plaintiff was not bound to state that any act of assembly, &c., mentioned in that clause, had been made and complied with, or that none had been made: And that the declaration was good.

Judgment affirmed by the Court of Exchequer Chamber.

Plea 3, to the above declaration, that during the term for which the services were transferred, and before either of the last instalments became due, plaintiff, against the will of the defendant, removed the labourers from his plantation to that of the plaintiff, and then detained them from thence hitherto, and defendant has never had their services since the removal. And further, that the defendant declined to pay the last two instalments, and failed in the required payment of one, and thereupon the services of the labourers reverted to plaintiff according to the agreement; and that all sums due at the time of such failure for the value or hire of the labour while defendant had the services were paid: *Held*, by the Court of Queen's Bench, on demurrer, a bad plea, as not showing that the plaintiff exercised his right to reclaim, on default made by the defendant.

Judgment affirmed by the Court of Exchequer Chamber.

Plea 1. That before either of the last two instalments became due, the agreement was rescinded by and with the consent of the plaintiff and defendant. Plea 4. That the agreement was made at Berbice, in British Guiana, between British subjects, and was made for the purpose of transferring, and purporting to transfer, the services of one hundred and fifty-three labourers during their term of apprenticeship, according to the statute. That, after such agreement, defendant had the services till the 1st of August, 1838; that in July, 1838, the governor and council of Berbice, according to the statute and usages of the colony, made an ordinance that all persons who, on the 1st of August, 1838, were apprenticed labourers should, from that day, be discharged from such apprenticeship, and thereupon, and before breach of the agreement, the labourers were discharged, &c., and the parties to the said agreement were prevented and prohibited by the authority aforesaid from further performing the same. Averment, that defendant paid the instalments for the whole time during which he had and could by law have the services. Replication to plea 1. That the agreement was not by and with the consent of plaintiff and defendant rescinded. To plea 4. That the parties were not

prevented or prohibited by authority of the said ordinance from further performing the agreement. Issues thereon.

On a special case, setting forth the pleadings and stating that the ordinance was made as pleaded: *Held*, by the Court of Queen's Bench, that the act of the colonial governor, determining the apprenticeship, was not such a consent of British subjects in the colony as would support the averment of plea 1. And, as to plea 4, that the agreement was not a contract of hiring and letting, but an absolute contract for a sale and transfer of plaintiff's right to the services for a gross sum of money due *in presenti*, though payable by instalments; and that plaintiff was entitled to the last instalments, though the legislature had determined the apprenticeship before they became due. And that both issues must be found for plaintiff, and judgment entered accordingly.

Judgment affirmed by the Court of Exchequer Chamber.

Plea 2. That the agreement was made in Guiana, &c., and for the purpose, &c., (as in plea 4,) and that, before the agreement an ordinance was made by the government of the colony, enacting that no deed or instrument should be good or valid in law to pass or convey, or affect, the services of any apprenticed labourer, unless a memorandum of such deed, &c. were made in a book to be kept for that purpose in the Colonial registrar's office within one month after executing such deed, &c. Averment, that such book was kept in the office, but that no memorandum of the said agreement was made according to the ordinance within one month after executing the agreement. Replication, that no book was kept for the purpose in the plea mentioned. Issue thereon.

*Held*, by the Court of Queen's Bench, that although by the omission to register, the agreement so far became void that the vendee could no longer claim the services, it was not void as to the vendor's claim for purchase money: that the vendee appeared to be the party who ought to have registered; and that, if the omission could have been a sufficient defence, the plea ought to have shown that the duty of registering lay on the plaintiff: and, a verdict having been taken for the defendant on the last-mentioned issue, the court gave judgment for the plaintiff *non obstante veredicto*.

Judgment affirmed by the Court of the Exchequer Chamber. *Mittelholzer v. Fullarton*, 6 Q. B. 990; *Fullarton v. Mittelholzer*, 6 Q. B. 1022.

#### STOCK IN EAST INDIA COMPANY.

**Duty to transfer stock.—Condition.**—Declaration in case, alleging that plaintiff was possessed of a share in the stock standing in the books of defendants, the East India Company, in his name, which stock was, according to the statutes, transferable in defendant's books by defendants making, at reasonable times, such transfer to any such person as the pro-

prietor should require; and that, before the committing, &c., no transfer of plaintiff's share had been so made: by reason whereof it was defendants' duty to make and enter in their books, at all reasonable times, such transfer of plaintiff's share as he should reasonably require. That afterwards plaintiff requested defendants to make and enter in their books, on &c., being the proper and usual time, a transfer of his said share to such person as he might name for that purpose at the time of the transfer: that afterwards, on &c., plaintiff was ready and willing to transfer his said share to a proper person *then about to be named by plaintiff*, and who was then ready and willing to receive the same, and was a person to whom the same might be lawfully and properly transferred: notice to defendants, and request to them by plaintiff to transfer: whereupon it was the duty of defendants to make, within a reasonable time, a transfer of the share to *the said person then about to be named*, and who was then ready and willing to accept the same. Breach, that defendants, before plaintiff had named the said person to whom, &c., did not nor would, when so requested and authorized, or within a reasonable time, &c., make the said transfer of the said share, or any transfer whatsoever, but refused to make and enter in their books any transfer thereof to any person whatsoever.

*Held*, on demurrer to a subsequent pleading, that the declaration showed no duty to enter a transfer to a transferee not named at the time of the proposal to transfer; that the refusal alleged must be taken with reference to the demand, and that the declaration was bad in substance for not showing a breach corresponding with the duty. *Gregory v. The East India Company*, 7 Q. B. 199.

#### SURETY.

See *Principal and Surety*.

#### TRADE.

See *Master and Serrant*.

#### WARRANT OF ATTORNEY.

**Joint or several.**—A warrant of attorney executed by two persons, authorizing attorneys to appear "for us and each of us," and to receive a declaration "for us and each of us," in an action of debt, &c., and after judgment entered up, "for us and in our name, and as our act and deed," to execute a release of errors, &c., is *joint* only, and not *joint and several*. *Dalrymple v. Fraser*, 2 C. B. 698.

#### WORK AND LABOUR.

**Where the appropriate remedy.**—A. was employed by B. to devise a method of curving metal tubing for the purpose of manufacturing life-buoys, of which B. was patentee: *Held*, that A. might recover compensation for the labour and skill, and also the value of the materials employed by him in the course of the work, under a count for work and labour and materials. *Grafton v. Armitage*, 2 C. B. 337.

And see *Assumpsit*, 2.

## ANNUAL REGISTRATION OF ATTORNEYS.

IN order to expedite the preparations for the Annual Certificates of Attorneys, which are to be issued next month, it is desirable that the *London agents* shall fill up the *declarations* according to the 6 & 7 Vict. c. 73. The forms may be obtained (without expense) from the Secretary at the office of the Incorporated Law Society, as the Registrar of Attorneys.

We understand that whilst it will be an accommodation to the officer who has to examine these 10,000 documents, to receive them as early as possible, the convenience of the profession will be consulted by having their certificates in readiness at the day appointed.

## LEGAL OBITUARY.

*Aug. 8.*—William Thomas Paris, Solicitor, of Stroud, Gloucestershire. Aged 41. Admitted on the Roll, H. 1827.

*Aug. 12.*—Anthony Freeman Payn, jun., Solicitor, of Hythe. Aged 25. Admitted on the Roll, E. 1844.

*Aug. 13.*—George Abbey, Solicitor, of Northampton, Coroner for the county, and Secretary of the Northamptonshire Law Society. Admitted on the Roll, E. 1810.

*Aug. 26.*—Henry Lucas, Solicitor, of Newport Pagnell, Bucks. Aged 56. Admitted on the Roll, E. 1814.

*Aug. 27.*—Joseph Ashton, of the Middle Temple, Barrister-at-Law. Aged 27. Called to the Bar 21st Nov. 1845.

*Sept. 4.*—Nathaniel Stevens, Solicitor, of Gray's Inn Square. Admitted on the Roll, T. 1806.

*Sept. 6.*—William Scott Peckham, of the Inner Temple, Barrister-at-Law. Aged 75. Called to the Bar 2nd July, 1813.

*Sept. 11.*—Clement Patteson, Solicitor, of Berwick-upon-Tweed. Admitted on the Roll, T. 1800.

*Sept. 14.*—Charles Cook, Solicitor, of New Inn. Aged 50. Admitted on the Roll, F. 1818.

*Sept. 15.*—S. Barrett, of Lincoln's Inn, Barrister-at-Law. Called to the Bar of the Middle Temple 24th Nov. 1837.

*Sept. 25.*—The Right Hon. Sir John Bernard Bosanquet, Knt., M. A., late one of her Majesty's Justices of the Court of Common Pleas. Aged 74. Called to the Bar by the Society of Lincoln's Inn, 9th May, 1800; appointed a Serjeant-at-Law, M. T. 1814; a King's Serjeant, E. T. 1827; a Justice of the Common Pleas, H. T. 1830.

*September 25.*—Isaac Last, Solicitor, of Hadleigh, Suffolk, aged 60. Admitted on the Roll, E. 1817.

## MASTER EXTRAORDINARY IN CHANCERY.

*From August 24th, to Sept. 17th, 1847, both inclusive, with dates when gazetted.*

Davies, James, Hereford. Sept. 14.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From August 24th, to Sept. 17th, 1847, both inclusive, with dates when gazetted.*

Andrew, John, and William Andrew, Manchester, Attorneys and Solicitors. Sept. 3.

Armstrong, William Matthew, and Charles Fisher, 38, Red Lion Square, Holborn, Attorneys and Solicitors. Sept. 17.

Ellis, John Luttmann, Richard Blagdon, and Henry Upton, Petworth, Attorneys and Solicitors, so far as regards the said John Luttmann Ellis. Aug. 27.

England, John, and George Lawrence Shackles, Kingston-upon-Hull, Attorneys and Solicitors. Sept. 3.

Fennell, Edward Francis, Robert John Child, and William Robert Kelly, 32, Bedford Row, Attorneys and Solicitors, so far as regards the said Edward Francis Fennell. Sept. 3.

Quilter, James, and John Taylor, 7, Gray's Inn Square, Attorneys and Solicitors. Sept. 10.

## THE EDITOR'S LETTER BOX.

IN the earlier years of this work, we were accustomed to submit to our readers the *substance* only of New Statutes, and to publish them *in extenso*, with notes, in detached volumes. We have for several years included all the Law Acts verbatim in the *Legal Observer*.

We also published, from the year 1831, in a separate form, "The Analytical Digest of Cases reported in all the Courts." We have now incorporated the Digest of Cases into the principal work. Thus all our readers have the benefit of the entire collection of Statutes relating to the Law and the effect of the Decisions of all the courts.

We were also formerly in the habit of publishing divers volumes for professional use. We now intend to incorporate whatever may be useful into the *Legal Observer* itself, and render it a book of indispensable utility, as well to the practitioner as the student.

The suggestions for the *Legal Almanac*, *Year-Book*, *Remembrancer*, and *Diary for 1848*, shall be carefully considered.

We are obliged to G. J. for the Report of the Decision at the Judge's Chambers, and shall insert it next week.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, OCTOBER 9, 1847.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

### RECENT ALTERATIONS IN THE CRIMINAL LAW.

#### JUVENILE OFFENDERS' ACT.

THE statutes passed in the Session of Parliament which has lately concluded, effecting alterations in the Criminal Law, although limited in number, are not devoid of importance. The acts falling in this description are, the “Juvenile Offenders’ Act,” 10 & 11 Vict. c. 82; the “Threatening Letters Act,” 10 & 11 Vict. c. 65; and the “Custody of Offenders’ Act,” 10 & 11 Vict. c. 67. All these statutes have been printed verbatim in the present volume, and will demand attentive perusal and consideration from those who are interested or engaged in the administration of the Criminal law.

The Juvenile Offenders’ Act,\* when its provisions come to be carefully examined, can scarcely fail to be deemed a grave experiment, involving the consideration of legal principles of acknowledged importance. The avowed object which the framers of this measure had in view was, to avoid the evils of long imprisonment, as regarded juvenile offenders, by allowing persons of this class to be proceeded against in a summary manner, without the intervention of a jury. To effect this object the act provides, that every person who shall be charged with having committed, or attempted to commit, or with having been aiding, abetting, counselling, or procuring the commission of any offence, which may now or hereafter be by law deemed or de-

clared to be simple larceny, or punishable as such, and whose age shall not, in the opinion of the justices, exceed fourteen years, shall, upon conviction before two justices assembled in petty sessions, at the usual place, and in the open court, be liable to the punishment, at the discretion of the justices. The person so convicted may be imprisoned in the common gaol or house of correction, for any term not exceeding three months, with or without hard labour; or he may be adjudged to pay any sum not exceeding 3*l.*; or, if a male, may be once privately whipped, either instead of, or in addition to such imprisonment. Moreover, upon the hearing of the case, if the justices shall deem the offence not to be proved, or that it is not expedient to inflict any punishment, they may dismiss the party charged, on his finding sureties for his good behaviour, or without sureties, and give him a certificate of dismissal, which certificate, as well as a conviction, shall have the effect of releasing the person charged from further proceedings for the same cause. It is also provided, that if the justices shall be of opinion, before the person charged has made his defence, that the case is a fit subject for indictment, they may decline to adjudicate thereupon summarily, or if the person charged, upon being called upon for his defence, refuses to have his case summarily disposed of, it shall be dealt with by the justices as if this act had not passed.

The latter provision materially diminishes the feeling of jealousy with which, we confess, we regard all attempts to supersede that now much decried institution, trial by jury. As we understand this enactment,

B B

before the trial by jury is dispensed with in any case in which it is now required by law, the party putting the law in motion, the justices, and the person charged, must all concur in considering the tribunal selected at least as well fitted as a jury for deciding upon the merits of the case. Assuming that the accused "juvenile" is in every case well informed as to his rights, and capable of deciding discreetly as between the justices and a jury, so far as the immediate parties are concerned, perhaps they have not much reason to complain, and the enactment may be deemed a harmless experiment. It is not very difficult to conceive that cases may arise, however, in which the law may be put in motion by persons other than those really aggrieved, and where the object of bringing the accused before justices, and obtaining a certificate of dismissal, or even a conviction, may be, the protection, and not the punishment of an offender. A larceny may be committed under circumstances of great aggravation. Before the party actually aggrieved has taken any steps to punish the offender, he may be brought before justices under this act, the charge made, but the aggravating circumstances intentionally concealed, and upon a confession, or sufficient proof, a slight punishment inflicted, which would operate as a bar to further proceedings, and spare the offender the far greater punishment attendant upon a public investigation of his offences. It may be supposed that the operation of the act being confined to persons within the age of fourteen, affords sufficient security that its provisions will not be abused in the manner suggested; but the mode of ascertaining the age of any person accused is not pointed out in the act. It appears by the 4th section, that the magistrates may be called upon to act under the statute in every case in which it is *alleged* that the age of the person charged does not exceed 14 years, and when brought before the justices, it is sufficient, if they shall be of opinion—upon the view or otherwise we presume—that the offender is within the statute in respect of his youth. Conceding that two justices, or one stipendiary justice, who, by a proviso in the 2nd section, is to have the same jurisdiction as two ordinary magistrates, will probably decide upon the facts arising out of a charge of simple larceny with the same degree of intelligence and impartiality as a jury, and supposing the case to be submitted to their adjudication with the full approval of all the parties immediately concerned, still we may be excused for entertaining some doubt, whether the public interest is best consulted, by dispensing with the solemnity and publicity necessarily attendant upon a trial by jury, in any case where the liberty of the subject is involved.

Another provision is to be found in the Juvenile Offenders' Act, which, we believe, is entirely novel. The 12th section enacts, that when any person shall be deemed guilty under this act, the presiding justices may order restitution of the property in respect of which the offence has been committed, to the owner, and if such property shall not then be forthcoming, the justices whether they award punishment or dismiss the complaint, may ascertain the money value of the property in question, and order payment thereof, by the person convicted to the owner, by instalments or otherwise, and the party so ordered to pay may be sued for the amount as a debt in any court in which debts are recoverable by law. Under this section, therefore, a "juvenile" who has been convicted of larceny may suffer three months' imprisonment and be privately whipped, and at the same time have a debt hung round his neck like a millstone for the remainder of his days. The law which mercifully protects a minor from incurring debts by entering into contracts during his minority, now enables him to imitate his seniors, and incur unlimited pecuniary liabilities, by the commission of a simple larceny! It cannot be denied, that this provision affords a very substantial ground for preferring the summary tribunal created by the act to the ordinary proceeding by indictment. If the offender is a person with tolerable prospects or respectable connections, the injured party may reasonably expect to recover ample compensation by resorting to this jurisdiction, whilst the Quarter Sessions or the Assizes can do nothing more than punish the offender. We shall not be understood as questioning the justice, and expediency of the provision which affords some prospect that a guilty person may be compelled to indemnify the party he has injured, when we observe, that if the principle involved in this enactment be unobjectionable, we can conceive no good reason why it should be confined in its application to offenders not exceeding the age of fourteen years.

As already remarked, the act came into immediate operation after it received the



Royal assent on the 22nd of July last, but the difficulties which have already arisen in carrying it into effect have hitherto restricted its practical operation to a very limited number of cases. The justices in petty sessions are invested under the 14th section, with an extensive discretion in ordering the payment of prosecutors' and witnesses' expenses, as well as compensation for their trouble and loss of time, and are also authorised to order payment to the constables and other peace officers for the apprehension and detention of any persons charged; but the 15th section provides, that those orders shall not be valid, nor paid by the county treasurer, "unless framed and presented in such form and under such regulations as the justices of the peace in Quarter Sessions assembled shall direct." The Quarter Sessions have not been holden since the act passed, and we apprehend it will be amongst the earliest duties of the magistrates at the present October Sessions to settle a proper scale of costs in pursuance of the act.

Our readers will observe, that the schedule to the act contains forms of the certificate of dismissal and conviction; but the first section provides, that the certificate may be in the form, or "to the effect" set forth in the schedule, and the 9th section provides, that the conviction may be drawn up "in the form of words set forth in the schedule, or in any other form of words to the same effect."

Irrespective of considerations founded on the nature of the tribunal and the extent of jurisdiction conferred by the statute, the question remains, how far it is likely to fulfil the intentions of its framers by ensuring the more speedy trial of juvenile offenders? It seems quite clear that the authority conferred on magistrates by this act can only be exercised by justices "in petty sessions assembled, at the usual place, and in open court." In some districts throughout the kingdom the petty sessions are held hebdomadally, in other places once a fortnight, and in many localities only once every month. Suppose a person to be charged with the commission of an offence cognizable by magistrates under this act immediately after the holding of the petty sessions, how is he to be dealt with, if there be no petty sessions holden for a fortnight or three weeks after the charge is made? If the accused can procure bail, the course to be taken by the magistrate is free from difficulty, as it is provided by the 5th section that the justice may suffer

the person charged to go at large, upon his finding sufficient sureties. When the party charged is unable to find bail, however, it would appear that the only course open to the justice to pursue is, to commit for trial to the common gaol. If this should occur in a great number of cases, and we confess we cannot see how it is to be avoided, the chief object of the act, the prevention of imprisonment before trial, will be in a great measure defeated. To give the experiment anything like a fair trial, therefore, it will be necessary to hold petty sessions much more frequently than at present. We presume this matter will also be brought under the consideration of the magistrates at the approaching sessions, and that petty sessions will be appointed in every district, at intervals not exceeding a week.

Our comments upon the Act "for extending the provisions of the Law respecting Threatening Letters, and Accusing Parties with a view to Extort Money," and the Act "to amend the Law as to the Custody of Offenders," must be deferred to a future opportunity.

## ALTERCATION AT THE MIDDLESEX SESSIONS.

THE daily newspapers have reported and freely commented upon an unseemly altercation which took place at the Middlesex Sessions, between the judge of the court, Mr. Serjeant Adams, and Mr. Henry Wilde, a junior member of the bar. The matter originated in some particulars connected with the trial of a felony at sessions, and as Mr. Serjeant Adams and Mr. Henry Wilde are at issue as to the facts, we abstain from giving increased publicity to what may turn out an incorrect version. Whilst suspending our judgment on the merits of the controversy, we must be permitted to express unfeigned regret at the manner in which it has been conducted. If the scene at the Middlesex Sessions has been correctly described in the newspapers, we give expression to what is less our own opinion than that of the public, when we state, that it must tend to lower the respect due to our courts of justice, and we trust the grosser parts at least of the report will be found to have been mistakenly exaggerated.

It was formerly considered, that the exhibition of an unruly temper and the employment of coarse language in a court of

justice disqualified the party indulging in the one or the other from professional advancement. Were it now understood that this rule was inflexibly adhered to, the discreditable scenes so often witnessed in our courts of justice of late years would be of rare occurrence. Before quitting this disagreeable topic, let us add, that we have heard it remarked so frequently of late years, that we doubt not there is foundation for the observation, that the judges, (with a few distinguished exceptions) manifest less courtesy and cordiality to the bar, than they were wont to do, and that the bar exhibit a diminished respect and deference for the judges. How far the bench or the bar have advanced in public estimation since the change of manners was introduced, we leave it to our readers to determine.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### ECCLESIASTICAL JURISDICTION.

10 & 11 VICT. c. 98.

An Act to amend the Law as to Ecclesiastical Jurisdiction in England. [July 22, 1847.]

1. 6 & 7 W. 4, c. 77. *Bishop to exercise jurisdiction throughout his diocese, save in causes testamentary.*—Whereas much inconvenience ensues from the continued suspension of the several diocesan courts in England within those parts of the dioceses which have been added thereunto under the authority of an act passed in the 6 & 7 W. 4, c. 77, intituled “An Act for carrying into effect the Reports of the Commissioners appointed to consider the State of the Established Church in England and Wales with reference to Ecclesiastical Duties and Revenues, so far as they relate to Episcopal Dioceses, Revenues, and Patronage;” and it is expedient that some remedy be thereunto applied: Be it enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the bishop of every diocese in England shall by himself or his officers exercise throughout the whole of his diocese as it now is or hereafter may be limited or constituted, save only in causes and matters testamentary or relating to the administration of the personal estate of intestates, the same jurisdiction and authority which before the passing of this act he or any bishop lawfully could or might exercise by himself or any other officers within any part of such diocese.

2. *Officers of diocesan courts to account for all fees, &c. received by them.*—And be it enacted, That the officers of the several diocesan and other courts shall keep an account in writing of the gross and net amount of all fees,

allowances, gratuities, perquisites, and emoluments received by them respectively on account of their several offices or employments in respect of any causes or matters arising within the diocese which during the continuance of temporary provisions of the first-recited act were not within the jurisdiction of the bishop of the diocese or other ecclesiastical authority, and shall from time to time, once at least in every quarter of a year, and, on demand, at any other time, pay over the net amount thereof to the treasurer of the governors of the bounty of Queen Anne, to be by him carried to a separate account, and retained until parliament shall provide for the appropriation thereof; and in case any person required to pay over any money under this act shall die or resign or be dismissed from his office while any such money remains unpaid by him, the executors or administrators of the person so dying, or the person himself so resigning or dismissed, shall be required to pay the balance of the money so remaining due and unpaid.

3. *Jurisdiction in causes testamentary to continue unaltered by change of province, &c.*—And be it enacted, That the jurisdiction of every ecclesiastical court in England in causes and matters testamentary or relating to the administration of the personal estate of intestates shall continue unaltered by any change of province, diocese, archdeaconry, or other jurisdiction whatever within the same limits and in like manner as was by law allowed before the passing of the herein-before recited act.

4. *Law of Bona notabilia to continue unaltered by change of province, &c.*—And be it enacted, That the Law of *Bona notabilia* shall be continued unaltered by any change of province, diocese, archdeaconry, or other jurisdiction whatsoever under the authority of the first-recited act as it was before the passing of the herein-before recited act.

5. *Certain authorities may continue to grant marriage licences as heretofore. Jurisdiction of bishops to grant licences not to be interfered with.*—And be it enacted, That all authorities, save and except the authority of the bishop of whose diocese any portion has been or may hereafter be taken away and added to another diocese under the provisions of the herein-before recited act, shall continue to grant marriage licences in the same manner and within same district as they might have done before the passing of the said act: Provided always, that nothing herein contained shall be construed to interfere with the jurisdiction or concurrent jurisdiction, as the case may be, of the bishops of the several dioceses in England to grant marriage licences in and throughout the whole of their dioceses, as such are now or hereafter may be limited or constituted.

6. *Temporary provisions of 6 & 7 W. 4, c. 77, continued by 7 & 8 Vict. c. 68, to cease on 2nd November, 1847.*—And be it enacted, That the temporary provisions of the herein-before recited act which by an act passed in the 7 & 8 Vict. c. 68, intituled “An Act to suspend, until the 31st day of December 1847, the Opera-

tion of the new Arrangement of Dioceses, so far as it affects the existing Ecclesiastical Jurisdictions, and for obtaining returns from and the Inspection of the Registries of Jurisdictions, now stand continued until the 31st day of December next, shall continue in force until the 2nd day of November in this year, and shall then cease to be in force.

**7. Commencement and continuance of act.**—And be it enacted, That so much of this act as is hereinbefore contained shall commence and come into force on the 1st day of November in this year, 1847, and shall continue until the 1st day of August in the year 1848, and, if parliament be then sitting, until the end of the then session of parliament.

**8. Confirming certain acts of jurisdiction.**—And be it enacted, That where under the provisions of the first-recited act any parish or place shall have been brought within any diocese to which it did not belong before the passing of the first-recited act, and any act of jurisdiction or authority shall have been exercised as to such parish or place since the passing of the first-recited act, and before the 1st day of November in this year, by the bishop or any officer of the bishop of the diocese or any archdeacon of the diocese to which such parish or place belonged, either before or since the passing of the first-recited act, which does not conflict with any similar act of jurisdiction or authority previously and since the passing of the first-recited act exercised as to such parish or place by any other bishop or officer of any other bishop or archdeacon having or claiming to have jurisdiction as to such parish or place, the same shall be deemed as good and valid as if such parish or place had then been wholly and undoubtedly within the diocese and jurisdiction of the bishop by whom, or by any officer of whom, such act of jurisdiction or authority shall have been exercised.

**9. Officers appointed under this act to be subject to regulations hereafter made by parliament.**—And be it enacted, That every person who shall have been appointed after the passing of the first-recited act, except as therein excepted, or who shall be appointed after the passing of this act, to the office of judge, registrar, or other officer of any Ecclesiastical Court in England, shall hold the same subject to all regulations and alterations affecting the same which may be hereafter made by authority of parliament; nor shall any person by his appointment to any such office acquire any claim or title to compensation in case the same be hereafter altered or abolished by act of parliament.

**10. Act may be amended, &c.**—And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament.

## LEGAL ADVISERS OF PRISONERS.

### RULE RELATING TO PRISONERS COMMITTED FOR TRIAL, OR FOR EXAMINATION.

The following rule for the government of the assizes of the county of Middlesex, had been

approved by Sir George Grey, the Home Secretary:—

“24th Sept. 1847.

“Prisoners for trial shall be permitted to see their relations and friends on any week-day without any order, between the hours of 11 and 2 o'clock in the afternoon, and at any other time on a week-day by an order in writing from a visiting or committing justice; and they shall be permitted to see their legal adviser (by which is to be understood a certificated attorney or his authorized clerk) on any day, at any reasonable hour, and in private if required. Prisoners of this class may write or receive letters, to be inspected by the governor, except any confidential written communication prepared as instructions for their legal adviser; such paper to be delivered personally to the legal adviser or his authorized clerk, without being previously examined by any officer of the prison; but all such written communications not personally delivered to the legal adviser or his clerk are to be considered as letters, and are not to be sent out of the prison without being personally inspected by the governor. Any person presenting himself for admission, as the clerk of an admitted attorney shall, in the absence of his principal, produce to the governor in each case evidence (satisfactory to such governor) of his being such an accredited agent; and the legal adviser or his clerk shall name the prisoner whom he wishes to visit.”

## SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

### PROPOSED REVIVAL OF THE ACTION OF ACCOUNT.

THE following reference was made to the common law committee of this society:—

“To consider the propriety of reviving the action of account for the purpose of facilitating the investigation of accounts in courts of common law, particularly in the cases of partners and agents.”

A paper on the above reference was presented to and read before the society, by Mr. *Alexander Pulling*, and referred, by their direction, to the committee:—

“The present paper is submitted to the consideration of the Law Amendment Society, with the view of eliciting the opinions of members conversant with the various systems of procedure recognised by the Law of England for the investigation of matters of account, before the subject is referred, as a mere common law question, to the common law committee.

“It is well known that in a large proportion of cases which, in this great commercial country, are made the subject of litigation, the real matter in dispute consists rather in details which can be more conveniently investigated in the chambers of qualified officers and accountants than in open court.

"It is in very few forms of proceeding, however, that the just state of the account between the parties can be ascertained by the court itself; and hence, for the investigation of these details have been gradually called into existence the cumbrous machinery of the Masters' Offices in Chancery, the system of references to arbitration AFTER the ineffectual institution of other legal proceedings, and the far less objectionable system of references, in the first instance, under the Bankrupt and Insolvent Laws; and in some few cases, to the Masters of the courts of common law.

"With regard to proceedings in matters of account in courts of common law, it appears a remarkable anomaly in our system of jurisprudence, that whilst it is deemed a duty peculiar to certain relations, *e.g.*, those of partners and principal and agent, that the party entrusted with the receipt of monies, &c., should be ever ready to render an account, there exists at this day no common law remedy by which this duty can be practically enforced.

"The proceedings in matters of account form a distinct portion of the *Code de Procédure Civile* of our neighbours (liv. V. tit. 4, p. 528,) as an ordinary legal proceeding; and our own common law provided for this purpose the form of action described in the books under the title of the *Action of Account*, which though now grown into disuse, was the peculiar remedy prescribed by the common law for the investigation of open accounts, not only between parties in trade, but in the case of guardians, receivers, and others over whom the Court of Chancery now exercises an exclusive jurisdiction.

"The preliminary proceedings in the action of account are in themselves as simple as those of other actions: at all events, as such proceedings were before the act of the 3 & 4 W. 4, c. 42, and the rules made by the judges thereunder. The declaration concisely specifying the circumstances under which the defendant is called on to account, and the period over which the account demanded extends: and the defence consisting either of a denial of the facts stated in the declaration, or of some matter in discharge of the defendant's *prima facie* liability. The result of the trial of the issue raised by these pleadings is, either a discharge of the defendant, or a judgment *quod computet* from a given day.

"The great source of the delay in this proceeding, as in that by suit in Chancery, which has superseded it, appears to arise subsequent to the reference of the account. In proceedings before auditors in an action of account the abuse appears to have grown up of allowing the same prolixity of written pleadings in the investigation of each item or class of items in the account, as in the original question of the liability to render the account.

"'It is the opportunity,' Lord Hardwicke observes (in *Exp. Bax.* 2 Ves., sen. 388), 'which the defendant has of delaying the proceedings by raising a succession of issues tried in a formal way, like so many separate actions,

that has brought the action of account into disuse.' On this ground of dilatoriness, in the old common law proceedings, alluded to by Lord Hardwicke, appears alone to rest the exclusive jurisdiction now exercised by the Court of Chancery in matters of account; and the inquiry into the proceedings in the Master's office, which has lately occupied so much of the attention of this society, sufficiently discloses how far the modern remedy offers an adequate substitute for that provided at common law.

"In cases of accounts not involving matters of trust, or other objects within the peculiar and legitimate jurisdiction of the Court of Chancery, the want of a common law remedy, particularly in matters of small amount, offers a direct immunity to fraud. This result is nowhere so glaring as in those cases where a defendant sued at common law for a debt or demand, succeeds in making out an express or *quasi* partnership between himself and the plaintiff, with respect to the subject matter of the claim. In this case, it will be remembered, the creditor's only remedy under the present system is by bill in Chancery, and a formal reference to the Master to investigate the accounts; however simple the transaction may be out of which the demand arises, and however small the amount in dispute. Thus, in *Bovill v. Hammond* (6 B. & C. 149), the leading case on this point, where two parties jointly undertook to procure a cargo for a particular ship, and the commission for the job was paid to one; it was held, that the latter could not be sued at law in an action in the form of money had and received by the other for his share of the commission, though it was an isolated transaction, and the amount actually disputed was only 5l.

"In some of the states of America our old form of the action of account appears to have been successfully revived for the purpose of adjusting mercantile disputes, both those between partners and between principal and agent. See *James v. Browne*, 1 Dallas, American Reports, 339; *Jordan v. Wilkins*, 2 Washington Circuit Reports, 482; and in Pennsylvania the mode of proceeding in this action has been very recently subjected to legislative amendments, so as to render it available in most cases respecting accounts, where in this country recourse is had in a suit in Chancery. Act of the legislature of Pennsylvania, 13th October, 1840, cited in the edition of Starkie on Evidence, by Gerhard and Metcalf, v. 2, p. 17.

"There are not wanting instances in modern times where, in this country, the revival of the action of accounts has been hailed with satisfaction from the bench, as by Chief Justice Wilmot in *Godfrey v. Saunders*, 3 Wilson, 47; and in *Scott v. Macintosh*, Lord Ellenborough observed: 'Those who wisely framed our jurisdictions did not contemplate a long account between merchants being referred to a jury. This tribunal is quite unfit for such an investigation, and we have not the necessary time to bestow upon it. Let the plaintiff bring his ac-

tion of account, and auditors will be appointed, who will do justice between the parties without producing any inconvenience to the public." 2 Camp. 239.

"In the recent case of *Baxter v. Hosier*, reported in 7 Scott, 233, and 5 Bingham's New Cases, 288, the adoption of this proceeding was made conducive to the ends of justice by the defendant consenting to a reference of the matter in dispute (under 150*l.*), which he had previously refused to accede to, on the supposition that the only remedy for the plaintiff was a suit in Chancery.

"The complete failure of justice of the remedy by suit in Chancery in many questions with regard to mercantile accounts; the impossibility, or, at least, absurdity of resorting to it when the amount in dispute is small; and the disuse of the ancient common law remedy now under consideration, have induced our courts of law to give a greater latitude to the actions of *debt* and *indebitatus assumpsit* in the case of agents, bailees, &c., in order to meet the purposes of justice; *e. g.* construing the omission of an agent or bailiff *ad merchandizandum*, to account for the goods entrusted to him for sale, as presumptive evidence after a certain period of the goods having been converted into cash. Practically, however, in intricate cases, the only result of a court of law taking cognizance of matters of account in this way is to induce the parties, often at the eleventh hour, after the whole of the expenses of the action, the trial, and the witnesses, have been incurred, to consent to refer the account to an arbitrator. In *Arnold v. Webb*, reported in a note to 5 Taunt. 432, *assumpsit* was brought to recover the balance of an account extending over thirty briefs sheets closely written; and *Dampier, J.*, though intimating his opinion that the cause could not be got through in five days, refused to dismiss it, but at length induced the parties to refer it.

"In the case, previously cited, of *Scott v. Macintosh*, the defendant, with more cunning, refused to refer, and thus appears to have evaded payment altogether. In fact, the plaintiff in such cases is generally at the mercy of the defendant, for in numerous instances, in addition to those arising out of partnership matters, the rules of evidence at *nisi prius* do not admit of the same facility of proof as is permitted in the cases of reference to arbitration or to auditors in an action of account, or to a Master in Chancery.

"The common law commissioners, in their second report, recommend certain alterations in the system of references to arbitration as a substitute for the old action of account, *e. g.*, making the reference compulsory in certain cases; but it is easy to see under the regulations proposed by them, that an arbitration would be much more tedious than a reference to auditors. See p. 78, 2nd Report.

"Were the remedy by action of account revived, and the auditors for the investigation of the account empowered to proceed like ordinary arbitrators, without the formalities of written pleadings and distinct issues on each particular

item, it is obvious, that in all the cases we have been just considering, the same object would then be attained by direct means, which is now attained only indirectly, at a great expense, and with considerable loss of time.

"The only alterations necessary to bring the action of account into present practical use appear to be the promulgation of similar rules for establishing simplicity of pleading and simplicity of proceeding in this as in other personal actions, and the abolition altogether of the system of written pleadings in proceedings before the auditors. The judgment *quod computet* would then be tantamount to an ordinary judgment in *assumpsit* by default for want of a plea, with the advantage of more complete justice being done under it; as the auditors are, at common law, empowered to find a balance due to either party. 2 Institute, 380.

"It appears desirable, also, to alter the law in this, as it has been in other cases altered with regard to the right of appeal from the judgment *quod computet*, on which, as the law at present stands, it is held no writ of error lies, *Metcalf's case*, 11 Coke, 38.

"Another and very important matter to be settled, in order to render the proceeding by way of action of account conducive to the ends of justice, is the regulation of the costs to which the respective parties should be entitled; for it is apparent that the judgment *quod computet* ought not of itself to entitle to costs the party seeking the account, should he afterwards turn out to be the debtor and not the creditor under it.

"Justice seems to require, that if any balance be found due from the party called on to account, the law should remain as it is; viz., that judgment may be forthwith signed against him for the arrears and costs; but, on the other hand, if the balance be in favour of that party, the costs should be in the discretion of the court or a judge on a special application.

"The revival of the action of account would of course put an end to the *exclusive* jurisdiction now exercised by the Court of Chancery in matters of account; but this would hardly affect the practical exercise of the Chancery jurisdiction, for the remedy would be, of course, confined to cases where nothing but a simple account between two parties was in issue, and the great boon to the suitor conferred by the change would be felt in cases where the amount in dispute is small, and the remedy by suit in Chancery wholly impracticable. In partnership disputes it would necessarily be confined to those cases where the partner called to account was not subjected to outstanding partnership liabilities; for in this case the ordinary jurisdiction of the Court of Chancery by way of injunction would be resorted to, to prevent, at all events, the actual payment of money found due to one partner, without allowing for such outstanding claims; and the same observation will apply to all other cases where the claims of third parties come in question.

"In any regulations which might be made

as to the persons to be appointed auditors, it is conceived the same latitude should be allowed to the parties as they have at present in cases of arbitration, or if it were deemed advisable to appoint regular officers, such as the present masters, or a certain number of barristers, merchants, and accountants, (to be remunerated as arbitrators are at present,) that the parties should still be at liberty to select such private auditors in their place as they might agree on. It would also be proper to give to the auditors appointed to take the account full powers to compel regular and continuous attendance, and it would be advisable to limit the discretion of the auditors as to postponements, which, as now unfortunately permitted to Masters in Chancery and to arbitrators, but too frequently occasion a large increase of expense to the suitor, and unnecessary delay in the conduct of the suit."

In noticing, some time ago, a very useful work on "Mercantile Accounts," by Mr. Alexander Pulling, we ventured to differ from him in the expediency of reviving the *Action of Account*; but we willingly give publicity to his views, and recommend our readers to weigh the arguments he has here ably set forth. As thus explained, the proposition is entitled to favourable consideration. We shall be glad to have the subject concisely discussed by such of our correspondents as are interested in it. The proposed alteration should be maturely canvassed before it is brought to the notice of parliament, and the suggestion is one on which the practical experience and judgment of solicitors should be particularly consulted.

### INDICATIONS OF FURTHER LAW REFORMS.

At the "gatherings together" which take place of the Constituencies to receive their new or old Representatives in parliament, we may sometimes discern signs, both of the popular and legislative feeling, in regard to future changes.

"Coming events cast their shadows before."

Amongst other notes of preparation for the next session, the following is not undeserving of observation.

At a public dinner given to Mr. Charles Buller, M. P., at Liskeard, on the 22nd September, the learned and honourable member, after going over all the main topics of political and social reform, adverted to that of the law. He said,

"We have much yet to be done in the reform of our financial policy and the state of our laws. As a lawyer myself, I say it with all deference

to my learned friends around me, and whose frowning brows are knitted against me on the present occasion (laughter); I say it with all deference to you, Mr. Mayor,\* (laughter); the state of the laws of our land, improved as they have been by the County Courts, is still a disgrace to this country. (Cheers.) I say the administration of the laws, civil and criminal—Chancery and Common Law—I will even go so far, with the permission of Dr. Curteis, as to say Ecclesiastical Law, even the Law of the Spiritual Courts, is the disgrace of this country."

We have little doubt that the Court of Chancery and the Ecclesiastical Courts will undergo much discussion, if not much change, in the new parliament, and this intimation from Mr. Buller, the Judge Advocate-General, is the more important from the weight and influence which his eminent talents and high character deservedly confer on his opinions.

### INSOLVENTS' PROTECTION, 7 & 8 VICT. c. 96.

ALTHOUGH it has now been decided by *Toomer v. Gingell*, that the final order of an insolvent, under 7 & 8 Vict. c. 96, protects his person only, and not future acquired property, it may be interesting to some of your correspondents to be informed of the following facts:—

In December, 1845, I signed judgment against a defendant for 20*l.*, and issued *fi. fa.* The officer, on attempting to levy, was prevented by the messenger of the Bankruptcy Court and defendant's protection, he having filed his petition. Defendant scheduled my client for debt and costs, and obtained his final order. A few weeks ago, hearing that defendant had a well-furnished shop, &c., in Liverpool, I directed the sheriff of Lancashire to apply to his predecessor for the *fi. fa.*, and send a fresh warrant thereon to a Liverpool officer, with instructions to levy. The officer levied accordingly, and defendant took out a summons returnable before Mr. Baron Platt, requiring plaintiff to "show cause why the officer should not withdraw and pay all costs, as the goods belonged to the official assignee," (no trade assignees had been appointed.) Mr. Baron Platt dismissed the summons with costs, and defendant paid the debt and costs.

So much for the *protection* of the Court of Bankruptcy, so easily obtained, so full of "promise to the ear," so fallacious in the result.

G. J.

\* The Mayor of Liskeard for the present year is a solicitor.

## COUNTY COURTS ACT.

## JURISDICTION OF BANKRUPTCY COMMISSIONERS.

*To the Editor of the Legal Observer.*

SIR,—I have read the letter of S. H. hereon in your number for the 25th September, page 503, and think that the question asked by "Tacitum" has not yet been correctly answered. S. H. is quite right in his view of the state of the law *before* the late act, 10 & 11 Vict. c. 102, for making alterations in the Courts of Bankruptcy and Court for Relief of Insolvent Debtors, by section 4, of which statute all powers, jurisdiction, and authority given to Courts of Bankruptcy and to the commissioners thereof by the Small Debts Act, 8 & 9 Vict. c. 127, is transferred to and vested in the Insolvent Court and New County Courts.

This last act came into operation on the 15th of September, and, I think, under the section I have cited, there is no doubt but that the jurisdiction of the Bankruptcy Commissioners to summon a party where the judgment or order is obtained in the Superior Court is taken away, and that now the jurisdiction in such cases is vested in the judges of the New County Courts, because the jurisdiction to summon a party upon judgments or orders obtained in the Superior Courts for debts under or not exceeding 20*l.* was given to the Bankruptcy Commissioners by the Small Debts Act, 8 & 9 Vict. c. 127, which jurisdiction, I conceive, is now taken away by section 4 of the last act, as before stated. I presume your correspondent S. H. had not read the late statute when he wrote you.

I am about applying for a summons under similar circumstances to the County Court here, and should either of your correspondents still have any doubt upon the subject, I shall be happy to inform him the result of my case.

G. P. W.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

## Lord Chancellor.

*Knill v. Chadwick.* July 26, 1847.

## MULTIFARIOUSNESS.

*If an entire case be made against one defendant, another defendant who is partially connected with the transactions of that case, cannot demur to the bill for multifariousness.*

Mr. Rolt and Mr. V. Prior moved, on behalf of the plaintiff, to discharge an order of the Vice-Chancellor of England allowing a demurrer by a defendant named Nicholson to the bill for multifariousness. Another ground of demurrer, viz., for want of equity, was not argued. The facts of the case are stated in his lordship's judgment.

Mr. Bacon and Mr. Wickens, for the defendant Nicholson, argued in support of the demurrer.

The Lord Chancellor. This case appears to me to be very free from doubt. Two grounds are advanced for supporting this demurrer, viz., want of equity, and multifariousness. The facts are stated to be these:—Various bills of exchange were drawn and accepted by the plaintiff, and delivered by him to the defendant Chadwick in the course of business during the existence of a partnership between them, for which bills it is said no consideration passed. Chadwick having endorsed one of them over to the defendant Nicholson, and the latter threatening to bring an action for the amount, the plaintiff filed his bill praying for an account between himself and Chadwick, and for an injunction to restrain Nicholson from bringing such action. In this case the demurrer, for want of equity, depends upon the question of multifariousness; for, if the plaintiff has a right in equity against the defendant Chadwick in respect of these bills of exchange, he will have the same right against Nicholson, who claims through Chadwick, unless the bill filed in this court is multifarious as regards Nicholson. Now, it has been decided in numerous cases, and, I think, first by Sir John Leach, that if one entire case is made out against one defendant, another defendant connected only with part of it cannot demur for multifariousness. There can be no question that such is the case in the present instance, and, therefore, I think the Vice-Chancellor was wrong, and that this demurrer must be overruled.

## Rolls Court.

*Fenwick v. Greenwell.* July 6th, 9th, and 12th, 1847.

## BREACH OF TRUST.—INDEMNITY CLAUSE.—CONTINGENCY.—INQUIRIES.

*Trustees are liable for the loss of trust funds which never came into their possession, notwithstanding the existence in the settlement of a clause of indemnity, if it was possible for them to have got in the funds. That, under certain circumstances, the trusts might not have arisen, is no justification for not getting in the trust fund.*

*The court will not direct inquiries as to whether the trust fund could be got in without a *prima facie* case to show that it could not.*

THIS was a bill by one of the children of a Mr. Fenwick against one of the two trustees and the representatives of the other trustee of a settlement made upon the marriage of Miss Elizabeth Cuthbertson with a Mr. Fenwick in the year 1807, to recover a certain sum of 5,000*l.* stock comprised in that settlement. This sum was alleged to be part of the residuary estate of a Mr. Henry Cuthbertson, to which Mrs. Fenwick, who was also Mr. H. Cuthbertson's executrix, was entitled as his residuary legatee. In fact no such exact sum



existed; but there were, at the time of the execution of the settlement, three sums of stock, amounting altogether to 4,964*l.*, part of the residuary estate of Mr. Henry Cuthbertson, standing in the name of Miss Cuthbertson. The trusts of the settlement were for the wife if she survived, but if she died in the life of her husband, for her children as she should appoint, and if no children, then as she should appoint, and in default of appointment, for the husband. The settlement contained a covenant on the part of Mr. Fenwick to join in the transfer, if it was made after the marriage, but no time was fixed at which the transfer should be made. It contained, also, the usual clause of indemnity to the trustees. No transfer was made of the stock in question, but it remained standing in the name of Miss Cuthbertson till the year 1816, and was then sold out at various times between that year and the year 1823, and applied for the benefit of Mr. Fenwick. Mr. Fenwick became bankrupt in 1833, and survived his wife, who died in July, 1837. The present plaintiff attained the age of 21 in 1841.

Mr. Spence and Mr. Elderton, for the plaintiff, relied upon *Booth v. Booth*, 1 Bea. 125; *Maitland v. Bateman*, 13 Law Journal, 273; 8 Jur. 926; *Caffray v. Darby*, 6 Ves. 488; and *Broadhurst v. Balguy*, 1 Y. & C. 76.

Mr. Roupell and Mr. Humfrey, for the representatives of the deceased trustee, and Mr. Kindersley and Mr. Faber, for the surviving trustee, argued, that in the cases cited, either the trustees had done some further act respecting the trust fund beyond merely executing the deed, or, by the terms of the settlement, they were bound to take steps to get in the fund at some defined period; neither of which circumstances existed in the present case. Here, also, until the death of the wife, it was uncertain who was entitled; therefore the trustees were protected by the indemnity clause. They also relied on certain statements in the answer of one of the defendants which tended to show that the sums of stock in question were subject to some unsatisfied claims under Mr. Cuthbertson's will, as, at all events, making a case for inquiry.

Lord Langdale said, it was undoubtedly a case of great hardship that trustees should be charged, after the lapse of so long a period, with funds which they had never received. But upon the execution of the settlement, the duties of the trustees arose, and it became a question only whether they could perform the trusts; for though trustees were bound by the trusts declared, they were not bound by the recitals of the instrument declaring them. Persons might represent themselves to be entitled when in fact they were not, so that the performance of the trust might be impracticable. It was said, that here, as no time was fixed for getting in the fund, as it might have happened that there were no children and no appointment by the wife, the trustees were not bound to provide for these contingencies. But he thought this argument could not be sustained: he thought trustees were bound to provide for

all the contingencies of the trust, and could not say they would not do so because in a certain case the trust might not arise. The case of *Maitland v. Bateman* was not so strong as the present one; for there a time was fixed, until the termination of which the fund could not be secured; whereas, here, there being no limitation as to time, it might have been secured immediately. Then, as to the three sums of stock, what was there to lead to the supposition that they were not Mrs. Fenwick's? They had been transferred into her name some time before the marriage. They remained standing in her name for many years afterwards: no demand was made upon them. Ultimately they were sold out at several times.

It was the duty of the court to take care that trustees were not charged with omissions which could not be supplied, but it would not direct inquiries where no case of suspicion arose. It was alleged that there were some unsatisfied claims under a will of Mr. H. Cuthbertson, but no proof of this was adduced. He came, though with reluctance, to the conclusion that, to the extent of the 4,964*l.*, the trustees were liable to make good the fund.

#### Vice-Chancellor of England.

*Ellis v. Warren.* July 19th, 1847.

#### CONSTRUCTION OF WILL.—BEQUEST TO A CHARITY VOID FOR UNCERTAINTY.

*Where a testatrix, by her will, gave a certain annual sum for the use and benefit of the in-brothers and in-sisters for the time being actually and bonâ fide resident in the several hospitals of or in the vicinity of Canterbury. Held, that the bequest was void for uncertainty.*

THE question in this case was raised on the construction of a clause in the will of Mary Braddon, dated March, 1834; it was in the words following:—"And I also give and bequeath unto, and for the use and benefit of, the several in-brothers and in-sisters for the time being actually and *bonâ fide* resident in the several hospitals of or in the vicinity of the city of Canterbury, whose present yearly income to each such in-brother and in-sister does not exceed the sum of 25*l.*, an augmentation or yearly income of the sum of 5*l.* to the use of every in-brother and in-sister for ever." And she directed her executors "to pay to, or invest in the names of, the governors, masters, trustees, or acting patrons of the several hospitals a sum of lawful money equal to meet such yearly augmentation; and the non-resident in-brothers and in-sisters during such non-residence should forfeit their, his, and her proportion of such augmentation; and such forfeitures and forfeiture should from time to time be paid over to the then resident in-brothers and in-sisters in equal shares." The Master in his report had found that there were twelve hospitals at and in the immediate neighbourhood of Canterbury, taking in a circuit of four miles.

Mr. H. Twiss, for the Attorney-General, now contended that effect ought to be given to the devise in favour of these hospitals, and that the court should put a construction on the rest of the clause; citing *Masters v. Masters*, 1 Pere Wms. 425.

Mr. Bethell and Mr. Chandless, on behalf of some of the next of kin, argued that the whole clause was void for uncertainty. There must be both a certainty in the persons to take and in the thing to be taken, in order for the court to come to a decision. The persons to take were here to be residents in the hospitals in Canterbury or in the vicinity, and the disjunctive character of the gift deprived it of certainty. How could the court conclude what was meant by actual and *bond fide* residents? or how could it determine what was meant by the vicinity of Canterbury? There was nothing like certainty as to the objects to take, nor was there the means of attaining certainty. They cited *Fillingham v. Bromley*, 1 Turn. & Rus. 530; *Ridgway v. Woodhouse*, 7 Beav. 437; *Attorney-General v. Siphthorpe*, 2 Rus. & Myl. 107.

Mr. Cooper and Mr. A. Lewis, for another of the next of kin, cited *Chapman v. Brown*, 6 Ves. 404.

The Vice-Chancellor said, he was unable to make any sense of the will; the very foundation of the gift was to be found in the words "Hospitals of or in the vicinity of Canterbury;" and he could not understand what the testatrix meant by the vicinity of Canterbury, neither was there anything whatever in the will to show how the vicinity was to be measured. It was impossible for him to sit there and frame and conjecture a meaning for the testatrix. From the will, as it stood, no human being was capable of fixing so as to state in numbers what was the sum to be appropriated. How then could there be a valid gift? He should therefore hold the bequest void for uncertainty.

#### Vice-Chancellor Knight Bruce.

*Aule v. Gibson.* March 17th, 1847.

#### REFERRING EXCEPTIONS.—COSTS.

*A plaintiff who had not served the order referring the exceptions within the proper time, was refused a motion to discharge the order, or to take the exceptions off the file, and was ordered to pay the costs of the irregular service.*

Mr. Russell and Mr. Heathfield moved to discharge an order referring exceptions to an answer, and that the exceptions might be taken off the file, and that the plaintiff should pay the costs. The answer was filed on 29th of January, exceptions to it were filed on 23rd of February, and on 13th March the defendant was served with an order, dated 5th of March, referring the exceptions. The plaintiff was too late in thus referring the exceptions 26th Article of 16th Order of May, 1845, and this was the proper course to be adopted. *Attorney-General v. Clack*, 1 Myl. & Cr. 367.

Mr. Miller, for the plaintiff, objected that the present application was unnecessary. As the exceptions were not referred in time, they should have been treated as abandoned, or any objection to them might have been heard before the Master. *Dalton v. Hayter*, 1 Phill. 551.

The Vice-Chancellor. I never heard of exceptions being taken off a file because they were abandoned. Upon the authority of *Dalton v. Hayter*, I am of opinion that this order cannot be discharged, and that I cannot take the exceptions off the file. The costs occasioned by the exceptions after the service on the 15th of March, must be paid by the plaintiff. I give no costs on this motion.

#### Eschequer.

*Semple v. Pink.* Trin. Term, June 3, 1847.

#### GUARANTEE.—CONSIDERATION.—FORBEARANCE.

*A declaration on a guarantee stated, that L. made his promissory note payable to the plaintiff; that the note being in the plaintiff's hands dishonoured, in consideration that the plaintiff would forbear and give time to L. for payment of the note for a reasonable time, the defendant guaranteed payment. At the time the note was made the defendant wrote on the back of it,—“I guarantee the payment of the within note by J. Leigh, the maker, on the 2nd Nov. next.” After the note was dishonoured, the defendant gave the plaintiff the following memorandum:—“I request you will hold over the promissory note in your favour of J. Leigh, and in consideration of your so doing, I undertake to continue in all respects my guarantee of the same.” Held, no evidence to support the declaration, and that the plaintiff was properly nonsuited.*

*Semble, that the declaration was bad for stating the consideration to be forbearance for a reasonable time.*

THIS was an action on a guarantee. The declaration stated, that one Leigh made his promissory note payable to the plaintiff or order for 200l.: that Leigh did not pay the note, and the same being in the plaintiff's hands overdue and unpaid; in consideration of the premises, and that the plaintiff would give time to Leigh for payment, to wit, for a reasonable time, the defendant guaranteed the payment of the note in case Leigh should make default: that although a reasonable time had elapsed, yet Leigh had not paid the amount of the note. *Plea non assumptit.*

At the trial before Rolfe, B., it appeared that the plaintiff agreed to discount the promissory note for Leigh, if the defendant would guarantee the payment when due. Accordingly the defendant wrote on the back of the note as follows:—“I do hereby guarantee the payment of the written promissory note by G. J. Leigh, the maker, on the 2nd Nov. next. John Pink.”

The note having been dishonoured, the defendant gave the plaintiff the following memorandum:—"November 2, 1844. I request you will hold over the promissory note in your favour of J. Leigh, dated 31st July, 1844, for 200*l.*, at three months, and in consideration of so doing, I undertake to continue in all respects my guarantee of the same. John Pink." On the part of the defendant it was objected that there was no evidence to support the declaration, and the learned judge being of that opinion, nonsuited the plaintiff. A rule *nisi* having been obtained to set aside the nonsuit, and for a new trial,

Ogle showed cause. The plaintiff was properly nonsuited. The plea of *non assumpsit* puts in issue not only the promise, but also the consideration on which it is founded. Here the consideration alleged is forbearance for a reasonable time, but the guarantee mentions no time, and the law will not imply a reasonable time. The mere forbearing is not a sufficient consideration to support a promise to pay, but it must be for some certain and specified time. *Chitty on Contracts*, p. 35; *Cole v. Dyer*, 1 C. & J. 461. The two documents taken together do not support the declaration, and the latter document is only an undertaking by the defendant to continue his guarantee to pay the note when due.

Miller, in support of the rule. The guarantee supports the allegations in the declaration. Where no particular time is mentioned for the performing of an act, the law implies a reasonable time. In agreements for the purchase of land, the vendor has a reasonable time for making out his title. [*Alderson, B.* In that case the act itself necessarily requires some time; but in a case like the present, what definite idea can you attach to a forbearance for a reasonable time? It would depend upon the disposition of the party, whether he was litigious or mild or somnolent. Suppose he brought his action the next day, would that be a forbearance for a reasonable time? *Rolfe, B.* The declaration seems to be bad.]

*Per curiam.* The rule must be discharged.

### Bankruptcy.

*Ex parte Hyams.* Sept. 30, 1847.

PRACTICE.—AFFIDAVITS.—TITLE OF THE COURT.

*Affidavits by country creditors to support proofs of debts, must be entitled "In the Court of Bankruptcy in London." If the words "in London" be omitted the affidavits will be rejected.*

THIS was a meeting for the choice of assignees, before Mr. Commissioner Evans. Several country creditors of the bankrupt, to an amount sufficient to determine the choice of assignees, proposed to prove their debts by affidavits, which were entitled "In the Court of Bankruptcy" merely.

The Solicitor to the fiat objected to the

reception of the affidavits made by the country creditors. The 24th of the General Rules and Orders, made under the 5 & 6 Vict. c. 122, s. 70, was in these words:—"Every affidavit under the said act shall be entitled of 'The Court of Bankruptcy in London,' or 'The Court of Bankruptcy for the — District' [as the case may be]." Here the words "in London" were omitted, and therefore the rule had not been complied with.

It was submitted, on the other side, that the affidavits were sufficiently entitled in the Court of Bankruptcy.

Mr. Commissioner Evans. As the objection is taken, I think I am bound to give it effect. The affidavits are not in compliance with the rule and cannot be received.

The Solicitor for the country creditors then applied to have the choice of assignees adjourned, to afford an opportunity for amending and reswearing their affidavits.

Mr. Commissioner Evans. I never adjourn a choice of assignees.

The choice was then proceeded with, and two persons nominated by the town creditors were appointed assignees.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### Common Law Courts.

#### PLEADINGS.

##### ABATEMENT.

1. *Affidavit of verification.—Statement of residence of co-contractor.*—In an affidavit of verification of a plea in abatement of the nonjoinder of A. as a defendant, his residence was declared to be "43, Lowndes Street, Belgrave Square." It appeared that he was residing there at the time of the commencement of the suit; that the house and furniture were his; that he was endeavouring to let the house furnished for a few months, until his return from abroad; and that B. was occupying it as his friend and guest.

Held, that this was a sufficient description of A.'s residence, within the stat. 3 & 4 W. 4, c. 42, s. 8.

The "residence" mentioned in that statute means the domicile or home of the party. *Lambe v. Smythe*, 15 M. & W. 433.

Cases cited in the judgment: *Newton v. Verbeke*, 1 Y. & J. 257; *Taylor v. Harrison*, 4 B. & Ald. 93.

2. *Auter action pendant.*—In an action of contract against A., he cannot plead in abatement the pendency of another action for the same cause against B. *Henry v. Goldney*, 15 M. & W. 494.

And see *Arbitration; Husband and Wife; Joint Contractors.*

##### ACCORD AND SATISFACTION.

1. *Annuity.*—In debt for money had and

received, &c., the defendant pleaded, that, after the accruing of the debts and causes of action, the defendant executed a deed, securing to the plaintiff a certain annuity, and that the plaintiff then accepted and received the same of and from the defendant in full satisfaction and discharge of all the said several debts and causes of action.

The plaintiff replied, that no memorial of the annuity deed was enrolled pursuant to the statute; that, the annuity being in arrears, plaintiff had brought an action against defendant; that the defendant pleaded in bar of that action the non-enrolment of the memorial; and that thereupon the plaintiff elected and agreed that the indenture should be null and void, as pleaded by the defendant, and discontinued the action.

*Held*, a good answer to the plea, inasmuch as it showed that the accord and satisfaction thereby set up had been rendered nugatory and unavailing by the act of the defendant himself. *Turner v. Browne*, 3 C. B. 157.

2. *Bill of Exchange.—Duplicity.—Assumpsit* on a bill of exchange for 50*l.* by drawer against acceptor, with counts for money lent, and on an account stated.

Plea to the first count, that before the bill became due, G. had agreed to pay defendant certain sums by monthly instalments of 40*l.*; that defendant was unable to pay the bill, and thereupon, while plaintiff was holder, and before it became due, in consideration that defendant, with assent of G., and at request of plaintiff, would permit plaintiff to receive from G. so much of the instalments of 40*l.*, as should amount to the sum in the bill, plaintiff agreed to accept payment of the bill thereout, and to discharge defendant from performing the promise in the first count.

Averment, that plaintiff received the first instalment, but neglected of his own wrong to procure payment of the residue from G. out of the next instalment.

Replication, that, in consideration that defendant would, with assent of G., at request of plaintiff, permit plaintiff to receive from G. so much of the instalments of 40*l.* as should amount to the sum in the bill, plaintiff did not agree to accept, &c., (traversing the plea in terms): *Held*, bad, on special demurrer, for not expressly traversing the agreement, and for leaving it uncertain whether it meant to put in issue simply the agreement, or the consideration, or both, or that G., by plaintiff's consent, agreed to pay him the bill out of the instalments, so as to substitute themselves as debtors to plaintiff on the defendant's acceptance.

8th plea, as to 50*l.*, parcel of the monies in the 2nd and last counts, that before breach of the premises in those counts, plaintiff drew his bill for 50*l.*, which defendant accepted and delivered to plaintiff, who then accepted and received the same in discharge of the said sum of 50*l.*, parcel, &c., and then indorsed and delivered the same to S., who from thence hitherto hath been, and still is, the holder

thereof, and entitled to sue the defendant on the same.

Replication, that the bill became due before the commencement of the suit, and defendant did not pay it, and that S., before the commencement of the suit, returned the bill to plaintiff, who then became the holder, and continued so to the commencement, &c., and still is the holder: *Held*, bad, on special demurrer, for setting up fresh matter, without confessing and avoiding, or expressly traversing the averment of S. being holder at the commencement of the action.

The word "discharge" in the plea imported, not payment or satisfaction of the debt, but only that the bill was given "for and on account of" it.

The 9th plea resembled the 8th, except in averring that whilst S. was holder, defendant and K., at his request and on his account, respectively paid him its amount.

Replication, traversing the payment, &c., of the bill in the terms of the plea, and generally, and averring the return of the bill by Sharp to plaintiff, and the holding of it by plaintiff, as in the replication to the 8th plea: *Held*, bad, on special demurrer, for like reasons as the eighth. *Kemp v. Watt*, 15 M. & W. 672.

#### ACCOUNT STATED.

In *indebitatus assumpsit* for money due on an account stated, it is not sufficient to plead that, after the accruing of the causes of action in the declaration mentioned, and before the commencement of the suit, defendant and plaintiff accounted together of and concerning the said causes of action, and all other claims and demands then being between plaintiff and defendant, amounting to a large sum, to wit, 1,000*l.*, and that on such accounting, a small sum, to wit, 150*l.*, was then found to be due and owing from defendant to plaintiff, which defendant then promised plaintiff to pay, and afterwards, before commencement of the suit, paid to plaintiff, who accepted it in full satisfaction of the sum due to him from defendant; for such a plea does not show that, at the time of the second accounting relied on, any cross demand by defendant against plaintiff existed, or, that, if it existed, it had not been agreed to be given up by defendant in consideration of plaintiff's giving up some other demand of his on defendant, so as to make payment of the balance a satisfaction of the larger sum. *Smith v. Page*, 15 M. & W. 683.

Case cited in the judgment: *Atherley v. Evans*, Sayer's Rep. 269.

#### AMENDMENT.

1. *After judgment and lapse of a year.*—The court refused to allow a replication to be amended after the lapse of a year after judgment pronounced on demurrer, the case having previously stood over that the parties might mutually agree to amend, and both having declined to do so. *Hammond v. Collis*, 3 C. B. 212.

2. *Christian name.*—Where the plaintiff had

issued a writ and declared against the defendant as "— Hume," and the defendant had afterwards given a written consent signed "Robert Montagu Hume," to a judge's order for judgment, and judgment was accordingly signed against him in November, 1844, as "— Hume," the court, on the application of the plaintiff, for the purpose of proceeding to outlawry against the defendant, made an order in Trinity Term, 1846, to amend the declaration, and all subsequent proceedings, by inserting the defendant's Christian name. *Wood v. Hume*, 4 D. & L. 136.

And see *Ejectment*.

#### ANNUITY.

*Non-enrolment.*—*Former action.*—Declaration for money had and received. Plea, that the defendant granted an annuity in satisfaction of the plaintiff's debt. Replication, that the deed was not duly enrolled; that in an action to recover arrears of the annuity, the defendant pleaded the non-enrolment, and that the plaintiff elected to make it null and void, and thereupon discontinued: *Held*, that the replication answered the plea, as it showed that the deed had become null by the defendant's act, and consequently, the plaintiff might recover the consideration for the annuity. *Turner v. Browne*, 4 D. & L. 201.

And see *Accord and Satisfaction*, 1.

#### ARBITRATION.

*Abatement or bar.*—To a declaration, Nov. 11th, 1844, for goods sold and delivered, and on an account stated, defendant pleaded, Nov. 23rd, 1844, beginning "And, for a further plea, as to the 1st and 2nd counts of the said declaration, the defendant saith that," &c., alleging that, before action brought, disputes had arisen between plaintiff and defendant whether defendant was indebted to plaintiff in any and what sum for the causes of action declared upon, which disputes they submitted themselves to refer, and did refer to arbitration, and mutually promised to fulfil the award; that the arbitrators, before action brought, took upon them the reference; that the matters in dispute are still under their consideration; and that a reasonable time has not elapsed for making the award. Conclusion: "and this the defendant is ready to verify, &c." On demurrer, *Held*,

1. That the plea could not be considered as plea in abatement informally pleaded.

2. That, as a plea in bar, it was bad; the tendency of an arbitration being no answer to an action for recovery of a debt. *Harris v. Reynolds*, 7 Q. B. 71.

#### ARGUMENTATIVE AVERMENT.

1. *Foreign law.*—*Replication de injuriâ.*—To debt on bond the defendant pleaded, that the bond was executed by him in France, where he was then domiciled; that it was not taken or passed by any public officer authorised by the laws of that kingdom, nor was it written throughout by the hand of the defendant; that, though the defendant signed the bond with his

own hand, he did not write thereon with his proper hand the formula styled in the French tongue a "bon," or "approuvé," bearing in words at length the sum secured, nor was the defendant at the time a merchant or tradesman, &c.; concluding, that, "by reason of the premises, the bond, by the laws of France, never was nor is obligatory or binding on the defendant, but always was and is of no force, effect, or validity."

*Held*, that the plea was bad, as being a mere argumentative and inferential statement of the French law; which, being pleadable only as matter of fact, ought to have been distinctly and affirmatively alleged.

*Quære*, whether, supposing it to have been well pleaded, the whole of the allegations therein might have been put in issue by *de injuriâ*. *Benham v. Earl of Mornington*, 3 C. B. 133.

2. *Law of France.*—To an action of debt on bond, the defendant pleaded, that the bond was executed at Calais, in the kingdom of France, where the defendant was domiciled; that certain forms in the plea mentioned were not adopted on its execution, nor did the defendant belong to certain classes of persons therein described; and that "by reason of the premises," by the law of France, the bond never was binding on the defendant: *Held*, that the plea was argumentative and inferential in its mode of stating the law of France, and therefore bad. *Benham v. Earl of Mornington*, 4 D. & L. 213.

And see *Bond; Contract; Uncertainty*.

#### ARREST, MALICIOUS.

*Defect cured by verdict.*—Since the 1 & 2 Vict. c. 110, the declaration in an action for a malicious arrest must allege falsehood or fraud in obtaining the judge's order for the *capias*, and must state the circumstances which constitute such falsehood or fraud.

But where the declaration alleged that the defendants, not having reasonable or probable cause for believing that the plaintiff was about to quit England, *falsely* and maliciously, and without reasonable or probable cause, caused and *procured* a judge to make an order for the plaintiff's arrest: *He*

declaration must be taken to mean that the order was procured by false evidence, or by means of falsehood; the allegations as to the defendant's not having reasonable or probable cause for believing that the plaintiff was about to quit England, being rejected as subterfuge. *Daniels v. Fielding*, 4 D. & L. 329.

And see *Married Woman*.

#### ASSUMPSIT.

See *Set-off*, 2.

#### BAILIFF.

*Justification.*—In an action of trover, the defendant pleaded, that the supposed grievance was committed after the passing of the 7 & 8 Vict. c. 19, intituled "An Act for regulating Bailiffs of Inferior Courts:" that the defendant had been duly appointed to act as bailiff in execution of the process of the Tolsey Court of

Bristol, which court has, by charter, jurisdiction for the recovery of debts; and that the defendant then became, and at the time of committing the supposed grievance, was a bailiff of the court, and that the supposed grievance was a thing done in pursuance of his duty as such bailiff, and that no notice of action was given: *Held* sufficient, and that the defendant was justified, on the ground that he was bailiff *de facto*. *Braham v. Watkins*, 4 D. & L. 42.

And see *Justification*.

#### BAIL.

*Render*.—Declaration on a bond under 1 & 2 Vict. c. 110, s. 8, given by the defendant and others, his partners in trade, stated that judgment was recovered in an action for the original debt, which was not paid; and that a judge's order was made to render the principals within 10 days, which time was enlarged without prejudice by another judge's order; that a rule *nisi* was obtained within that period, calling on the plaintiffs to show cause on a subsequent day why the defendant and his bail should not have further time to render, and that in the mean time proceedings against the defendants and his bail should be stayed; and that neither the defendant nor his co-debtor rendered themselves according to the practice of the court, or within the time mentioned in either of the orders or within any other time, or in any manner directed by the court or any judge thereof: *Held*, 1st, that a plea which alleged that a writ of *ca. sa.* had issued in the original action was good; 2ndly, that a plea which averred, that the judge's order had been obtained *ex parte* by the plaintiff, was bad; 3rdly, that a plea which alleged that the rule *nisi* in the declaration alleged, was made absolute on the 22nd day of term, giving further time to render, and that a render was made within that time, was good; 4thly, that a bond under 1 & 2 Vict. c. 110, s. 8, under such circumstances, was not a claim within the 6 G. 4, c. 16, ss. 51 and 56, barred by the defendant's certificate obtained after the commencement of the original action, but before judgment; 5thly, that a plea alleging that the plaintiff had brought an action to recover the sum mentioned in the bond, was not a bar to an action on the bond, although the judgment in respect of the debt was obtained in an action subsequently commenced. *Hinton v. Acraman*, 3 D. & L. 426.

Cases cited in the judgment: *Sandon v. Proctor*, 7 B. & C. 800; *South v. Gryffith*, Cro. Car. 481; *Weddall v. Manuaptors of Jocar*, 10 Mod. 287; *Wilmore v. Clerk*, 1 Lord Raym. 156; *Jameson v. Campbell*, 5 B. & A. 250; *Ex parte Barker*, 9 Ves. 110; *Ex parte Marshall*, 1 Mont. & Ayr. 145; *Abbott v. Hicks*, 7 Scott, 733; 5 Bing. N. C. 578.

#### BAILMENT.

See *Detinue*.

#### BAR, PLEA IN.

See *Abatement*; *Arbitration*; *Double pleading*; *Husband and wife*.

#### BILL OF EXCHANGE.

1. *Presentment, allegation of*.—In a count by an indorsee against the drawer of a bill drawn payable in London, the venue being laid in London, a general allegation of presentment was held to be a sufficient allegation of presentment in London since the rule of Hilary T. 4 W. 4, r. 8.

*Quere*, whether the defect would have been aided by the defendant's pleading over, if the venue had been laid elsewhere. *Boydell v. Harkness*, 3 C. & B. 168.

2. *Venue*.—*Presentment*.—By Reg. Gen. Hil. T. 4 W. 4, ii. r. 8, no venue is required to be stated in a declaration except the one alleged in the margin; and therefore, in an action by the indorsee against the indorser of a bill of exchange drawn payable in London, where the venue stated in the margin of the declaration was "London," it was held that an averment of presentment, not stating where, sufficiently alleged a presentment in London. *Boydell v. Harkness*, 4 D. & L. 178.

3. *Initials of party*.—In a declaration on a bill of exchange, it is informal to describe any of the parties to the bill by the initials only of his christian name, without showing that he is so described in the bill itself. *Esdaile v. Maclean*, 15 M. & W. 277.

4. *Certainty*.—In a declaration containing several counts on different bills of exchange, each count, after describing the bill, referred to it as "the said" bill of exchange: *Held*, sufficiently certain, even on special demurrer; for that the words "the said" ought to be referred to the last antecedent. *Esdaile v. Maclean*, 15 M. & W. 277.

5. *Amending judgment*.—Where the defendant pleads *non assumpsit* to the whole of a declaration, consisting of a count on a bill of exchange, and money counts, the plaintiff cannot sign judgment generally.

And the court will not allow him to amend the judgment, by confining it to the count on the bill, and entering a *nolle prosequi* on the other counts. *Eddison v. Pigram*, 16 M. & W. 137.

And see *Accord and Satisfaction*, 2.

#### BOND.

*Argumentative averment*.—Debt on bond against a surety under 1 & 2 Vict. c. 110, s. 8, conditioned for the payment of a debt due by H., or for his render. Plea, that the plaintiff recovered judgment in the Queen's Bench for the debt, and arrested and detained H. on a *ca. sa.*; that H. sued out a *habeas corpus cum causa*, and was committed to the Marshalsea of the Queen's Bench, and detained there until after the return day of the writ; that H. was always ready to render himself, and would have rendered himself according to the practice of the court, but that he was prevented from so doing by the plaintiff in manner aforesaid: *Held*, on special demurrer, that if the plea was construed as an excuse, as it did not distinctly aver that it was impossible for H. to render

himself, it was bad as argumentative; and if construed as a performance, it was bad as not being substantially so averred. *Hayward v. Bennett*, 4 D. & L. 228.

#### CONTRACT.

1. *Argumentative denial*.—*What amounts to the general issue*.—Where the declaration in an action of assumpsit complained of a breach by the defendant of a condition on which the sale of certain houses had been made to the plaintiff, namely, "that the vendor would deliver an abstract of title to the purchaser, or his or her solicitor," and the plea of the defendant stated that at the time of the promise it was agreed as part of the contract, that the defendant should deliver an abstract of the title, commencing with a certain specified deed, and to that extent only. *Held*, that the plea was an argumentative denial of the contract in the declaration, and bad as amounting to the general issue. *Sharland v. Leifchild*, 34 L. O. 277.

2. *Exception*.—*A. delivered goods to B. to be conveyed from Gibraltar to London, the act of God and the dangers of navigation excepted. The vessel was to touch at Cadiz on the passage. While the vessel was at Cadiz the goods belonging to the plaintiff were seized as contraband, and forfeited according to the revenue laws of Spain.*

*Held*, in an action by *A.* for the non-delivery of the goods, that a plea setting out the above facts was bad as not amounting to a defence to the action. *Spence v. Chadwick*, 34 L. O. 80.

And see *Debt*, 1.

#### COAL LEASE.

*Covenant*.—Declaration in covenant stated, that plaintiff, by indenture, granted to defendant all the coals and mines of coal under certain lands; that defendant covenanted to pay to plaintiff, as the price of the coal so granted, 40*l.* for every statute acre of the said coal which should be found under the said lands; and until the said price should be fully paid, to pay plaintiff 40*l.*, part of the said price, in each year, by two equal half-yearly instalments, whether the whole of an acre of the said coal should be gotten in every such year or not.

Averment, that, at the making of the indenture, there were under the said lands divers, to wit, 14 acres of the said coal, and that divers, to wit, 13 acres of the said coal still remained under the said lands; and that 40*l.* for two of the half-yearly instalments of the said price for the coal aforesaid, became due and still was in arrear and unpaid to the plaintiff: *Held*, on motion in arrest of judgment, that the declaration was bad, for not averring that coals had been found under the premises. *Jowett v. Spencer*, 15 M. & W. 662.

Case cited in the judgment: *Sicklemore v. Thistleton*, 6 M. & Sel. 9.

#### CONSTABLE.

See *Trespas*, 1, 2.

#### COVENANT.

1. *Construction of*.—In trespass for breaking

and entering a farm, the plea, after setting out a lease by indenture from *A.* to the plaintiff, which contained covenants by the plaintiff that he would not, at any time during the term, sow, reap, or take from the arable lands demised, or any part thereof, more than two crops of any sort of corn or grain successively, but would every third summer fallow or lay the said arable lands down with rye-grass and clover seeds, or would plant with potatoes, or sow with peas or beans, which should be twice well hoed; and also that the plaintiff, his executors, &c., should not, at any time during the term, let, assign, or set over, or otherwise part with the indenture of lease, or the premises thereby demised, without the special license and consent of *A.*, his heirs and assigns, in writing—with a power of re-entry for breach of any covenant in the lease—and setting out a grant by indenture of the reversion to the defendant, stated, that, after the making of these indentures, &c., the plaintiff did set over and part with the said indenture of lease and the term thereby created, within the true intent and meaning of the said indenture of lease, and the proviso and condition for re-entry therein contained, to wit, by pawning, pledging, and mortgaging the said indenture of lease to and with certain creditors, to wit, *B. & C.*, without the consent of *A.* or of the defendant. The plaintiff replied, that he did not set over or part with the said indenture of lease, or the term thereby created, within the true intent and meaning of the said indenture of lease, &c., by pawning, pledging, or mortgaging the said indenture with the said supposed creditors, modo et forma: *Held*, bad, on special demurrer; for that the replication should have demurred generally that the plaintiff had parted, i. e., in any manner parted, with the indenture, instead of confining the issue to the particular mode of parting with it, immaterially stated under a scilicet, in the plea.

Another plea stated, that during the term the plaintiff sowed and took off and from 50 acres of the arable lands demised, more than two crops of corn successively; and that he did not nor would every 3rd year summer-fallow or lay the said arable lands or any part thereof down with rye-grass, &c., nor did nor would plant with potatoes, nor sow with peas, which were twice well, or in any manner hoed, &c. The plaintiff replied—that he did not at any time during the term, sow or take off or from the arable lands, or any part thereof, more than two crops of any sort of grain successively—and in every 3rd year did summer-fallow a part, consisting of 50 acres, and did lay down with rye-grass and clover seeds part, consisting of 50 other acres, with potatoes, and did sow another part, consisting of 50 other acres, with peas, and the residue of the arable land with beans, which were twice well hoed, &c.; and that there was not at any time during the said demise, any portion of the said arable lands in the indenture contained which the plaintiff did not every 3rd year either summer-fallow or lay down with rye-grass and clover-seeds, or plant



with potatoes, or sow with peas or beans which were twice well hoed; contrary to the covenant of the plaintiff in the indenture in that behalf contained, &c.; concluding to the country: *Held*, on special demurrer to the replication, that the covenant set out was two-fold—that the tenant would not take more than two crops of grain in succession—and that he would do certain other things; that the plea correctly averred a breach of the 1st branch of the covenant, but did not show a breach of the 2nd, inasmuch as it did not negative the sowing with beans; and that the replication, which contained a direct traverse of the breach well alleged in the plea, was not rendered bad by the introduction of the subsequent immaterial matter relating to the other breach.

A replication which answers the only material part of a plea, is good, notwithstanding the introduction of immaterial matter in the plea. *Hammond v. Colls*, 1 C. B. 916.

2. In an action upon a covenant by the defendant, that he would pay over to the plaintiff the 1st fruits or proceeds which should be first realized, and "be at the disposition of the defendant," under a sequestration, "forthwith upon the receipt thereof," the declaration alleged, that divers moneys, being 1st fruits and proceeds, were realized, and were at the disposition of the defendant, and that he had not paid them over to the plaintiff: *Held*, sufficient, on special demurrer, and that it was not necessary to aver actual receipt of the money by the defendant. *Smith v. Nesbitt*, 2 C. B. 286.

And see *Coal Lease; Recitals in Deed*.

#### COVERTURE.

*Circumstantial and informal plea.*—To a count against the maker of a promissory note, he pleaded *in bar*, that at the time of making the note, the plaintiff was the wife of A., that the consideration for the note was the loan of money of A. advanced by the plaintiff to the defendant without A.'s authority and against his will, that the plaintiff took the note, and held and still holds the same without the authority and against the will of A., and that he never had any property in or right to the note: *Held*, an informal plea of coverture. *Guyard v. Sutton*, 3 C. B. 153.

#### DANGEROUS ANIMAL.

Declaration in case stated, that the defendant wrongfully and maliciously kept a ram, well knowing that he was prone and accustomed to attack, butt, and injure mankind: and that the said ram, while the defendant so kept the same, attacked, butted, and threw down, and thereby hurt the plaintiff: *Held*, sufficient, on motion in arrest of judgment, without showing that the defendant negligently kept a ram. *Jackson v. Smithson*, 15 M. & W. 563.

Case cited in the judgment: *May v. Burdett*, decided in Q. B. in Trin. Term, 1846.

#### DEBT.

1. *Where not maintainable in respect of a special contract.*—Where by the terms of a

contract a service to be performed by A. for B. is to be paid for in goods, A. cannot declare in debt for the value of the service, but must sue on the special contract.

But if B., by his own act, render the delivery of the goods impossible, A. may sue in debt for the value of the service.

So, if B. allow the goods to be sold under an execution against him. *Keys v. Harwood*, 2 C. B. 905.

Case cited in the judgment: *Baines v. Payne*, 1 Chitty on Pleadings, (8 ed.) 357.

2. *Payment.*—"Causes of action."—In an action of debt, a plea of payment in satisfaction and discharge of the causes of action in the declaration mentioned, is a plea to the damages as well as the debt. *Triston v. Barrington*, 4 D. & L. 273.

3. *Payment in satisfaction.*—In debt, a plea of payment of a sum of money, in satisfaction of all the causes of action in the declaration mentioned, is an answer as well to the damages as to the debt. *Triston v. Barrington*, 16 M. & W. 61.

And see *Set-off*, 1.

#### DE INJURIA.

*Trespass.*—*Heriot.*—*De injuriâ* is a good replication to a plea in trespass justifying, as lord of a manor, the seizure of the best beast as a heriot. *Price v. Woodhouse*, 4 D. & L. 286.

See *Argumentative Averment*, 1; *Heriot Custom*.

#### DEMURRER.

1. *Plea amounting to non assumpsit.*—Declaration upon an agreement whereby it was contracted that the plaintiff should supply, and the defendant receive, certain bales of wool, and alleging as a breach the refusal of the defendant to receive; plea, that the wool contracted for was to be according to sample, but the wool tendered was inferior to the sample: *Held*, on special demurrer, that the plea was not bad, as amounting to *non assumpsit*. *Sieveling v. Dutton*, 4 D. & L. 197.

2. *Statement of grounds.*—Where a party demurs specially to several pleas, &c., on the same grounds, the causes of demurrer to all after the first are sufficiently stated by saying that the plea, &c., is insufficient "for the like causes and grounds of objection which have been taken to the said — plea." *Braham v. Watkins*, 16 M. & W. 77.

And see *Duplicity; Frivolous Demurrer; Grounds of Demurrer; Joinder in Demurrer; Libel; Slander*.

#### DETINUE.

1. *Special bailment.*—To a declaration in detinue upon a special bailment of scrip certificates to be re-delivered to the plaintiff on payment of a sum of money, the defendant pleaded that the scrip was deposited as a pledge and security for money advanced by him to the plaintiff, and that on repayment thereof he tendered and offered to deliver up and return

to the plaintiff the scrip certificates which the plaintiff then refused to accept and receive.

*Held*, on special demurrer, that the word "detain" in detinue means an adverse detention, and that consequently the plea was bad, as amounting to *non detinet*. In a declaration in detinue, the allegation of bailment, whether common or special, is mere surplusage, and not traversable. *Clements v. Flight*, 4 D. & L. 261.

Cases cited in the judgment : *Whitehead v. Harrison*, 6 Q. B. 423 ; *Gledstane v. Hewitt*, 1 C. & J. 565.

2. *Detinue*.—Declaration alleged, that plaintiff delivered certain paper-writings, purporting to be scrip certificates for shares, to defendant, to be re-delivered, on request, after payment to him of a certain sum, averring that that sum was paid to defendant. Breach, that defendant hath not delivered the paper-writings, though requested, but "detains" the same. Plea, that they were deposited with defendant as a pledge and security for 210*l.* advanced by him to plaintiff, and that, on payment of that sum, defendant tendered and offered to deliver up and return them to plaintiff, who then refused to receive them : *Held*, on demurrer, that this plea was bad, for denying the detention argumentatively, and for amounting to *non detinet*. The detention complained of was an adverse detention, because the word "detain" in a declaration in detinue means, that defendant withholds the goods, and prevents plaintiff from having possession of them.

The bailment stated in the declaration in detinue, whether it was general or special, is surplusage, and not traversable, the gist of the action being the detainer of plaintiff's goods. *Clements v. Flight*, 16 M. & W. 42.

#### DISTRESS.

See *Trespass*, 3.

#### DOUBLE PLEADING.

*Bar and further maintenance*.—The court refused to allow a defendant to plead a plea in bar of the further maintenance of the action, together with a plea in bar of the action generally. *Suckling v. Wilson*, 4 D. & L. 167.

#### DUPPLICITY.

*Satisfaction and discharge*.—*Demurrer*.—Where to a count on a bill of exchange the defendant pleaded the delivery and acceptance by the plaintiff of his, the defendant's, own promissory note, payable on demand, for and on account of such bill of exchange and the causes of action in respect thereof, and then further alleged that the plaintiff afterwards agreed to accept and did accept the warrant of attorney to confess judgment of a third party, in full discharge and satisfaction of the said promissory note, and of all causes of action in respect thereof, and of the causes of action in the said count on the bill of exchange mentioned. *Held*, that the plea only set up one defence by way of satisfaction and discharge, and

was not bad for duplicity. *Fearne v. Corkrane*, 34 L. O. 81.

And see *Accord and Satisfaction*, 2.

#### EJECTMENT.

*Amendment*.—In an action of ejectment commenced in Hil. T. 1841, by a mortgagee on a mortgage deed of the date of 1824, the term was stated to be 11 years from the date of the demise, 22nd of June, 1831. The defendant was admitted to defend as landlord, and the cause was set down for trial at the summer assizes, 1841, when, upon terms of arrangement being proposed by the defendant, the plaintiff countermanded his notice of trial. Negotiations had since been going on between the parties till March 1846, when they were broken off, and notice of trial again given for the spring assizes, 1846. The plaintiff then having discovered that the term demised had expired, countermanded his notice of trial. The court made absolute a rule permitting the lessor of the plaintiff to amend the declaration and issue, by inserting the term of 20 for 11 years, or by altering the date of the demise. *Doe d. Rabbits v. Welch*, 4 D. & L. 115.

#### ESTOPPEL.

1. *Damages*.—*Cross action*.—To a declaration for unskilfully constructing a kitchen range, the defendants pleaded, by way of estoppel, that they sued the now plaintiff for the price of constructing the range, and that he pleaded payment into court of 42*l.*, which the now defendants accepted in satisfaction : *Held*, on demurrer, that the plea did not amount to an estoppel, and afforded no answer to the action. *Rigge v. Burbidge*, 4 D. & L. 1.

2. *Payment into court*.—In an action for the stipulated price of a specific chattel, the defendant pleaded payment into court of a sum which the plaintiffs took out in satisfaction of the cause of action : *Held*, that the defendant in that action was not estopped thereby from suing the plaintiffs for negligence in the construction of the chattel. *Rigge v. Burbidge*, 15 M. & W. 598.

Case cited in the judgment : *Mondel v. Steele*, 8 M. & W. 858.

And see *Recitals in Deed*.

#### FEIGNED ISSUE.

*Form of*.—A feigned issue in the form of a wager, directed under the Interpleader Act, is not rendered illegal by the prohibition of actions upon wagers in 8 & 9 Vict. c. 109.

The adoption of the form of issue given in the schedule to that act is not compulsory. *Luard v. Butcher*, 2 C. B. 858.

#### FOREIGN LAW.

1. *Notice of process*.—*Non-appearance*.—In assumpsit on a judgment or decree of the Tribunal of Commerce at Brussels, the defendant pleaded, that he was not at any time served with any process issuing out of that court, at the suit of the plaintiffs, for the causes of action upon which the said judgment or decree was obtained, nor had he at any time notice of any

such process, nor did he appear in the said court to answer the plaintiffs.

*Held*, bad, inasmuch as the plea did not show that the proceedings against the defendant in the Belgian court were so conducted as to deprive the defendant of the opportunity of defending himself therein. *Reynolds v. Fenton*, 3 C. B. 187.

See *Argumentative Averment*, 1, 2.

2. *Liability of foreign prince resident in this country*.—To an action of debt on an annuity bond executed by the defendant when he was reigning Duke of Brunswick, but who was resident in this country at the time the action was commenced, a plea, merely alleging that the defendant was a sovereign prince at the time the deed was executed, was held no answer to the action, the plea not showing that the defendant was a sovereign prince at the time the action was brought and plea pleaded, nor that the deed was executed in respect of a subject-matter which when made could not be enforced by law in the country in which it was made. *Munden v. The Duke of Brunswick*, 34 L. O. 204.

#### FRIVOLOUS DEMURRER.

1. *Signing judgment on the whole record*.—Where a demurrer clearly frivolous was pleaded to one of several replications by a defendant, who was under terms of pleading issuably, &c., the court gave the plaintiff leave to sign judgment on the whole record as for want of a plea; unless the defendant consented to strike out the pleadings ending with the demurrer, and pay the costs of the application and of preparing for the trial which had been lost, and take short notice of trial. *Tucker v. Barnesley*, 4 D. & L. 292.

2. *Signing judgment.—Irregularity*.—In action by drawer against acceptor of a bill of exchange, the defendant pleaded, (amongst other pleas concluding to the country,) that the plaintiff indorsed the bill to a person unknown, who, at the time of the commencement of the suit, was the holder thereof, and entitled to sue the defendant thereon. The plaintiff replied that the said person was not at the time of the commencement of the suit the holder of the bill, concluding to the country. The plaintiff having added the similiter and delivered the issue, the defendant struck out the similiter to the above replication, and demurred specially. A judge at chambers ordered the demurrer to be set aside as frivolous, and that the plaintiff be at liberty to sign judgment on the plea in question. The plaintiff signed judgment on that plea, tried the other issues, and obtained a verdict, the defendant not appearing at the trial. On motion to rescind the judge's order, and set aside the trial and subsequent proceedings: *Held*, that, as the rule did not ask to set aside the issue, there was no irregularity in the trial: *Held*, also, (Alderson, B., *dissentiente*), that the judgment signed was irregular, there being other pleas on the record covering the whole cause of action. *Talbot v. Bulkeley*, 4 D. & L. 306.

Case cited in the judgment: *Hitchcock v. Watford*, 5 Scott, 792; 6 Dowl. 457.

#### GROUND OF DEMURRER.

A demurrer to a plea stated in the body of it, and also in the margin, "that the plea was insufficient for the like grounds of objection as those taken to a former plea:" *Held*, a sufficient statement of the special causes of demurrer. *Braham v. Watkins*, 4 D. & L. 42.

And see *Demurrer*, 2.

#### HERIOT CUSTOM.

*Replication de injuriâ*.—In trespass for taking chattels, if the defendant justifies the seizure under a heriot custom, the plaintiff may reply *de injuriâ absque tali causâ*. And if there are several pleas claiming several heriots in respect of different tenements, one replication *de injuriâ* will suffice. *Price v. Woodhouse*, 16 M. & W. 1.

See *De Injuriâ*.

#### HUSBAND AND WIFE.

1. *Abatement or bar*.—In an action by husband and wife for slander of the wife, a plea that she is not the wife of the plaintiff, is a good plea in bar. *Chantler v. Lindsey*, 4 D. & L. 339.

2. *Abatement*.—To an action by husband and wife for slander of the wife, a plea that the female plaintiff was not the wife of the other plaintiff, is a good plea in bar. *Chantler v. Lindsey*, 16 M. & W. 82.

#### ISSUABLE PLEA.

1. *Cross action*.—The plaintiffs declared on an agreement, that the defendants should furnish the plaintiffs with a steam-engine by a specified time, to be paid for by instalments, payable at certain times, with reference to the progress of the work: Breach, that the steam-engine was not furnished by the specified time. A plea alleging the non-payment of the 2nd instalment, though due with reference to the work done, according to the terms of the agreement, *held*, to be an issuable plea. *Zulueta v. Miller*, 4 D. & L. 186.

Cases cited in the judgment: *Steele v. Harmer*, 14 M. & W. 136; 2 D. & L. 861; *Mackay v. Wood*, 7 M. & W. 420; 9 Dowl. 278.

2. A plea framed fairly to raise the question whether the action is not rendered unmaintainable by reason of the non-performance of an alleged condition precedent, is an issuable plea. *Zulueta v. Miller*, 2 C. B. 895.

Cases cited in the judgment: *Steele v. Harmer*, 14 M. & W. 139; *Mackay v. Wood*, 7 M. & W. 421.

#### JOINDER IN DEMURRER.

1. *Similiter.—Issue*.—The rule of Hilary Term, 4 Will. 4, c. 108, is qualified and altered by the rule of Hilary Term, 4 Will. 4, c. 3; therefore, where the plaintiff replied by taking issue on some pleas and demurred to others, and added the similiter and joinders in demurrer and delivered the issue: *Held*, irregular as under the latter rule; the defendant was not

bound to join in demurrer until four days after demand. *Cooke v. Blake*, 33 L. O. 94.

2. A defendant who obtained time to plead on the term of rejoining within 24 hours, delivered several pleas, to some of which the plaintiff replied, concluding to the country, and to others he demurred. The plaintiff having added the similisers and joinders in demurrer, the defendant struck them out. The plaintiff then obtained a judge's order, "that the defendant forthwith join in demurrer." On motion to rescind the order: *Held*, that the Reg. Gen. Hil. T. 4 W. 4, r. 3, qualified and altered the Reg. Gen. H. T. 2 W. 4, r. 108, and that the plaintiff was irregular in adding the joinders in demurrer. *Cooke v. Blake*, 4 D. & L. 313.

Case cited in the judgment: *Jones v. Key*, 2 C. & M. 340; 2 Dowl. 265.

#### JOINT CONTRACTORS.

*Abatement. — Pendency of action.*—In an action against one of several joint contractors, the defendant cannot plead in abatement the pendency of another action for the same cause against another co-contractor; but he should plead in abatement the non-joinder of the joint contractor: and if a second action be brought against all, the pendency of the former action against the other joint contractor may be pleaded. *Henry v. Goldney*, 4 D. & L. 6.

And see *Non-joinder*.

#### JUSTIFICATION.

*Bailiff of inferior court.*—In trover, the defendant pleaded, that the supposed grievance was committed after the passing of the 7 Vict. c. 19, and within the jurisdiction of the inferior court thereafter mentioned; and that, before and at the time of the grievance, the defendant had been duly appointed to act as a bailiff in the execution of the process of the court of the Tolzey of Bristol, which then, and at the time of the passing of the said act of parliament, had, by charter, jurisdiction for the recovery of debts and damages in personal actions arising within the city and county of Bristol; and the defendant then became and was, and thenceforth until and at, &c., was a bailiff of the said court; and that no notice of action was given to him pursuant to the said act.

*Held*, on demurrer, 1st, that the plea brought the defendant within the protection of the 8th section of that act; 2ndly, that the jurisdiction of the inferior court was sufficiently shown; 3rdly, that the defendant's duty as bailiff was sufficiently set forth. *Braham v. Watkins*, 16 M. & W. 77.

Case cited in the judgment: *Hughes v. Buckland*, 15 M. & W. 346.

And see *Trespass*, 1, 2.

[This Section of the Digest is sub-divided on account of its length. The remainder will appear in the next number. Our readers will observe that we continue to add a Statement of the

Cases cited in the Judgments. It will be found that the cases to which these notes are attached, are generally of more importance than the rest. And the reference to those previous authorities will, no doubt, be of much use both to the practitioner and the student.]

#### THE EDITOR'S LETTER BOX.

THE next volume of the *Legal Observer* will be further enlarged, in order to increase the number and value of the REPORTS OF RECENT DECISIONS, without curtailing any of the Original Articles, or select Information, for which the Work has been distinguished.

The Contents of each Number will be arranged as follows:—

1st. Original articles on all projected alterations in the Law and Practice;—the state of the Profession and measures for its improvement;—New Statutes, with explanatory notes and disquisitions on their construction;—Parliamentary Bills, Reports and Returns:—Notes or Commentaries on important Decisions in Common Law, Equity, and Conveyancing:—the Law of Railways, Insurance, and other Joint Stock Companies:—Review of New Books:—The Law of Attorneys and Costs, and the Examination of Articled Clerks:—Proceedings of Law Societies:—Legal Biography; Correspondence; Professional Lists, &c.

2nd. *Original and early Reports* of every important Decision in all the Superior Courts, by Barristers of the several Courts:—New Rules and Orders of Court;—an Analytical Digest of all Reported Cases in all the Courts—classified according to the leading subjects adjudicated upon;—Cause Lists;—Circuits;—Sittings; and every other information relating to the business of all the courts.

The further letters on the jurisdiction of the New County Courts, in summoning debtors under unsatisfied judgments obtained previous to the passing of the New County Court Act, reached us too late for the present number, but shall be attended to in the next.

"S." of Worcester is informed that the university degree, to be available in shortening the time of service under articles of clerkship, should be taken before he was articulated.

\*.\* Communications for the *Legal Almanac*, *Year-Book*, *Remembrancer*, and *Diary* for 1848, should be sent, addressed to the Editor, at Messrs. Maxwell and Sons, 32, Bell Yard, Lincoln's Inn.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

---

SATURDAY, OCTOBER 16, 1847.

---

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

---

## THE PUBLIC, THE PROFESSION, AND THE COUNTY COURTS.

---

It is a remarkable fact, that while the profession has been almost silent under the injury and insult inflicted by the establishment of the New County Courts, the public has been clamorous against the working of a measure which was to bring justice home to the door of every man with cheapness and expedition. We admire the philosophy, and approve the policy, of our professional brethren, in leaving the community to find out by experience the inconvenience and hardship that must arise from the mode of practice adopted in the new tribunals. It would have been vain for the attorneys to raise their voices against the deliberate injustice of taking from them a very large portion of that employment on the faith of which they have prepared themselves for their profession at a considerable expense; and were they to complain of the insult passed upon them by the wretched scale of fees, according to which their services are estimated under the new act, they would meet with little sympathy. Their remonstrances would, of course, be attributed to interested motives; for, although self-preservation is admitted to be the first of natural laws, which all men are bound to obey, the lawyers themselves are not allowed to do so, without their alleged rapacity being denounced by an unjust and senseless clamour. The interests of all other professions are admitted to be entitled to some consideration, but the body of legal practitioners, who pay in admission stamps and yearly certificates a much larger sum than any other class, are re-

garded as a set of persons whom it is not simply allowable, but decidedly laudable, to victimise. It has, therefore, become the fashion to believe that the best way to improve the law is to degrade, and, as far as possible, exterminate its professors, until every man, acting as his own lawyer, has, in accordance with the proverb, "a fool for his client." This consummation has been most materially advanced by the late County Courts Act, and the suitors are beginning to find that the old saying is fearfully realized. It was not to be expected that the science of law could be rendered more simple or effectual by superseding those who have made it their study, any more than it could be hoped that the medical art would be advanced by discouraging the employment of the physician. There would be a general outcry against a proposition to provide for the better preservation of the public health by inviting every man to doctor himself and become his own patient, yet when the same principle is applied to the law, the absurdity is hailed as something approaching very nearly to the perfection of wisdom and enlightenment.

Notwithstanding the vulgar prejudice which attributes mercenary motives to the professors of the law in their hostility to those rash and intemperate innovations that pass under the general name of reform, we may declare, without fear of contradiction, that, as a whole, there is no class of men so ready to forego their individual advantage for the general benefit. All the salutary changes that have taken place; all the real amendments that have been introduced into our legal system

within the last few years, have been suggested by professional men, who have had the general support of the whole body of their brethren in every measure of actual improvement by which the public could profit. There is something, therefore, very illiberal in treating the opposition of lawyers to certain measures of so-called legal reform as the result of sordid feeling, when the hostility shown towards new schemes is in most cases dictated by a just perception of their total impracticability or utter worthlessness.

It is, perhaps, as well that the public should now and then be made to feel the inconvenient consequences of a delusion which the sufferers have fallen into with wilful alacrity. Like the frogs in the fable, who complained to Jupiter without cause, and obtained in succession a stork and a log, the public will find in the County Courts Act the properties of both these gifts combined, for there are already loud complaints of the voracity with which money is swallowed up in fees, and of the machinery proving an immovable log to the suitors through their being deprived of professional assistance in working it. The pretence of cheapness in the carrying out of the new measure is found to be the hollowest of all hollow delusions, for the act proceeds upon the ridiculously erroneous principle that a man must effect a saving by acting for himself instead of paying another to perform for him the service he requires. According to this doctrine, an individual having to send a letter to Liverpool had better take it himself and save the postage,—a case which, though an extreme one, is analogous to the presumption of the framers of the County Courts Act, that suitors will be benefited by appearing in person instead of delegating their business to a legal practitioner receiving a fair remuneration for his services.

We cannot believe that the public will patiently submit to a burden that has already proved most vexatious in various ways; and we therefore confidently expect that in the ensuing session many of the evils of the County Courts Act will be remedied. The hopeless absurdity of dispensing with legal assistance is already so manifest, that this ruinous piece of experimental quackery must be promptly got rid of. Already it is practically nearly at an end, for men engaged in business either abandon the claims which they can only sustain by hanging about the precincts of a County Court for hours, during which their pro-

fitable occupations are neglected, or they employ professional assistance at their own private cost, or—worst alternative of all—place themselves in the hands of some of those unauthorised harpies, to whom the new act gives ample encouragement. The public will not, and indeed cannot, act for themselves in the County Courts, without the most serious inconvenience and loss; but, as the scale of fees allowed will not remunerate respectable men, it follows as an inevitable result that pettifoggers and pretenders will step in to take whatever they can get from the suitors who are abandoned entirely to the mercy of these operators on their ignorance and helplessness. The newspapers have already teemed with reported cases of hardship, besides numerous letters of complaint from those who have experienced the working of this measure for bringing home justice to every man's door,—provided every man can carry it home himself, which he is about as able to do, in some instances, as he would be to transport to his own abode a quantity of heavy goods without the intervention of a carrier.

## COMMERCIAL FAILURES.

### AVOIDANCE OF THE COURT OF BANKRUPTCY.

SINCE the first week in August, above forty commercial houses, placed by the magnitude of their mercantile transactions in the first class, have unfortunately been compelled to suspend their payments; and singular as it might seem, up to the period when we write, in no instance have we heard that the partners in any of the insolvent firms have been made bankrupt. In ordinary cases, when a merchant or a tradesman avows himself to be unable to meet his pecuniary engagements, his name appears in the next Gazette, under the List of Bankrupts, quite as a matter of course. How the leviathans of commerce escape from the meshes of the law, in which not only the dolphins, but the minnows, are inevitably caught, is a mystery productive of much speculative observation.

The course of proceeding by which the Court of Bankruptcy has been avoided in the instances alluded to, is simple enough, and has become perfectly notorious. The defaulters call their creditors together, lay before them a statement of assets, debts,

and liabilities, and it is agreed, without more, that the affairs of the defaulting house shall be wound up with the least possible delay, under an assignment to trustees for the benefit of creditors, or else what is called "a deed of Inspection." A competent accountant is employed, the assets, whatever they may be, collected, and the amount distributed rateably amongst the creditors. The uniform adoption of such a course of proceeding, in numerous instances, evidences the existence of mutual confidence in a remarkable degree amongst all the parties concerned. If the creditors of firms failing for large amounts entertained the slightest suspicion that there was any wilful mis-statement or concealment of the affairs of the insolvent houses, or that any fraudulent preference or appropriation of property was contemplated, it is not probable that they would voluntarily relinquish the facilities afforded by the Bankrupt Laws for the investigation of a bankrupt's affairs, and the recovery of property improperly withheld or transferred. On the other hand, an insolvent who assigns the whole of his effects for the benefit of his creditors, must have a full reliance on their liberality and honour, when he depends on them for present protection and future indemnity, in preference to the legal protection and indemnity insured by a certificate of conformity under the Bankruptcy Acts. The prevalence of such a feeling, at a period when so much has occurred to shake commercial confidence, is creditable to all parties concerned, and affords matter for congratulation and just pride.

The high character for probity and honour previously maintained by the several parties connected with the houses which have recently fallen under a pressure of unparalleled severity, explains and accounts, perhaps, in some considerable measure, for the different course pursued in their cases, and adopted in other instances, where men engaged in trade or commerce have failed in their engagements. We cannot escape from the conclusion, however, that creditors and debtors concur in thinking the affairs of bankrupt houses of high character better and more advantageously administered by private arrangement than by an arrangement effected by law and carried out under the authority of a fiat in bankruptcy. If all concerned in a series of commercial failures, by universal consent decline to resort to a tribunal especially established with a view

to such cases, either the constitution of the tribunal or its administration must be defective. We fear it must be conceded that the mode in which the Bankrupt Laws are administered is not satisfactory to the commercial community. There is an absence of uniformity in the decisions of the commissioners upon many points of grave importance. Leniency and severity are frequently meted out to bankrupts upon principles quite unintelligible to commercial men. No one can predicate with confidence in what tone and temper the complaint of a creditor will be entertained, or the explanation of a bankrupt received. The arrangement of business in the several courts is peculiarly inconvenient and objectionable to men of business, and the expenses of working a fiat are constantly complained of, as being altogether disproportioned to the benefit derived in ordinary cases from the machinery which the court supplies.

In reference to the expense of working a fiat, we believe great misconception prevails, and deem it more than doubtful whether an estate of large amount could be realized and divided under any system more economical. The sum of 30*l.*, paid to the Accountant-General under the stat. 1 & 2 W. 4, c. 56, ss. 46 and 50, although objectionable upon principle in every case, and operating most unfairly in cases where there are little or no assets, is comparatively an insignificant item when there is an estate of magnitude to administer. We have reason to think that the scale of remuneration to official assignees is not precisely the same in the courts of any two commissioners; but we learn from a letter printed for private circulation during the present year, and addressed by Mr. Commissioner Fane to the Secretary of Bankrupts, on the remuneration of official assignees in Bankruptcy, that the average amount received by the official assignees in that learned commissioner's court is about 2½ per cent.; but when the assets to be divided exceed 25,000*l.*, the remuneration is little more than one per cent, an amount which can scarcely be considered excessive, if the importance of the functions the official assignee is called upon to perform be fairly considered. As to the solicitor's bill of costs under a fiat in Bankruptcy, it is subjected in every case to a rigid taxation, and usually falls short of the amount to which a solicitor is entitled for his services, when the affairs of a bankrupt house are wound up under a private



arrangement. The charges made by accountants for remuneration in such cases frequently, we understand, exceed the aggregate amount of the solicitor's bill, and the per centage to which the official assignee would be entitled, if the estate were administered under the Bankrupt Laws.

The reluctance to force defaulting houses to the Court of Bankruptcy, so far as it is founded on an apprehension of the supposed expenses incidental to that course of procedure, we believe to be ill-considered. The other grounds of objection to that tribunal are, perhaps, not altogether visionary. Whilst thus glancing at them, we should perhaps add, that commercial men entertain a decided aversion to the publicity which attends nearly everything that occurs in the Court of Bankruptcy, and that persons who are so unfortunate as to fall into embarrassments, strain every nerve to preserve themselves from what is called *the exposure* of passing through the court. There is certainly no legitimate reason why an honest man, in any rank of life, who conforms to the law, and submits to the distribution of his effects by a court of competent jurisdiction, should feel that he can be injured by publicity. The prevalence of such a feeling, however, is unquestionable; and we repeat, that the indisposition which debtors and creditors mutually exhibit to avail themselves of the Bankrupt Laws must be ascribed, in a great degree, if not altogether, to the administration of those laws, which is alike unsatisfactory to the commercial and trading community, as to the legal profession.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### COMMONS INCLOSURE.

10 & 11 VICT. C. 111.

An Act to extend the Provisions of the Act for the Inclosure and Improvement of Commons. [July 23, 1847.]

1. 8 & 9 Vict. c. 118. *Where the title to a manor, &c. is litigated, the consent of both claimants to be equivalent to consent of an actual owner.*—Whereas an act was passed in the session of parliament holden in the 8 & 9 Vict. c. 118, intituled "An Act to facilitate the Inclosure and Improvement of Commons and Lands held in common, the Exchange of Lands, and the Division of intermixed Lands; to provide remedies for defective or incomplete executions, and for the Non-execution of the Powers of general and local Inclosure Acts; and to provide for the Revival of such powers in certain cases:" And whereas

it is expedient further to facilitate proceedings under the said recited act in the cases herein-after mentioned: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That where an action, suit, or difference shall be pending concerning the title of any manor, land, or right or to an estate or interest therein, of which the actual owner would, under the definitions of the said act, be (in respect of such manor, land, or right) the person interested in land concerning which any application or proceeding may be made or be pending under the said act, the consent of both the persons between whom such action, suit or difference may be pending, to any application, inclosure, or other proceeding under the said act, shall be as effectual as the consent of the actual owner of the manor, land, or right, or of such estate or interest therein, would have been in case no action, suit, or difference had been pending.

2. *Provision for the case of more than one person claiming to be interested.*—Provided always, and be it enacted, That where, according to the claim of a party to such action, suit, or difference, more than one person would be or become interested as aforesaid in respect of such manor, land, or right, such consent of such number or portion, or (as the case may require) such non-signification of dissent by such number or portion of the persons who would so become interested, to the application, inclosure, or other proceeding as would have been sufficient in case such claim had been established shall be equivalent to the consent of the party so claiming under the provisions of this act.

3. *Saving rights of the Crown and others, to the soil of encroachments.*—And be it enacted and declared, That where any lands shall have been inclosed, by way of encroachment or otherwise, from any land subject to be inclosed under the said recited act, for more than 20 years next preceding the day of the first meeting for the examination of claims in the matter of an inclosure under the provisions of the said act, and shall not, with such consent as in the said act provided, be directed by the valuer to be considered as allottable, and parcel of the land to be inclosed, neither the award, in the inclosure under the provisions of the said act, nor any consents or orders previous thereto, shall be taken to divest, defeat, or prejudice any property, estate, right, or title of her Majesty or of any other person in or to the lands so inclosed for 20 years or upwards as aforesaid, or the minerals or substrata under the same, or in or to any rent or payment payable in respect thereof (except only any rights of common intended to be extinguished by the inclosure under the provisions of the said act).

4. *Exchanges may be made of land, excepting or reserving minerals and easements.*—And be it enacted, That where an exchange shall be made under the said act of lands not subject to be inclosed under such act, or of lands subject

to be so inclosed as to which no proceedings for an inclosure shall be pending, it shall and may be lawful for the commissioners, in conformity with the terms of the application for such exchange, to except or reserve out of such exchange the property or right of or to all or any of the mines or minerals under all or any part of the land given by both or either of the parties, together with rights and easements for or auxiliary to the exercise or enjoyment of the right or property of such excepted or reserved mines and minerals, and (whether such mines and minerals shall or shall not be reserved) such rights of way and other easements as the parties to such application may have agreed on.

5. *Recital of provision as to commissioners not proceeding to amend any award under any local act, &c. until notice of application shall have been given by advertisement, &c. Recited provision repealed, and if commissioners think fit to proceed on any application, they may refer the same to an assistant commissioner, &c.*—And whereas by the said recited act of the 8 & 9 Vict. c. 118, it is provided, that the commissioners shall not in any case proceed to amend any award under any local act of inclosure, or under the act of the 7 Will. 4, for facilitating the inclosure of open and arable fields in England and Wales, or to authorize the execution of any power or authority under any such local act which shall have been lost or become incapable of being executed, as therein mentioned, or to authorize any person to be by them appointed as therein mentioned to execute the powers or authorities of any local act, in the place of the commissioner or commissioners appointed under such local act, until notice of the application shall have been given by advertisement as therein mentioned; and that in case, within two calendar months from the publication of the last of the advertisements, one-fourth part in number or value of the persons interested, according to the definitions thereinbefore contained, in the land to which the award so proposed to be amended, or the part thereof proposed to be amended, should relate, or in the land to be affected by the exercise of such powers or authorities, should give notice in writing to the commissioners of their dissent from such application, the commissioners shall not proceed further on such application; be it enacted, That the said recited provision be repealed; and that in case the commissioners shall think fit to proceed on any such application as aforesaid the commissioners shall refer such application to an assistant commissioner, and such assistant commissioner shall hold such meeting or meetings to hear any objections which may be made to such application, and any information or evidence which may be offered in relation thereto, or to the matter thereof, and shall report his opinion as to the expediency or in expediency of proceeding upon such application, having regard to all rights which may be disturbed or affected thereby, in such and in the same manner, and subject to such and the same provisions concerning notices of such meetings, as are in the said act of

the 8 & 9 Vict., contained concerning inquiries as to the expediency or in expediency of a proposed inclosure; and upon the report of such assistant commissioner it shall be lawful for the commissioners to proceed or to abstain from proceeding on such application, as they may think fit; and it shall be lawful for the commissioners (where they shall so think fit) to cause such further meetings to be held, and inquiries made in relation to such application, or to the report thereupon, as might have been held or made in the matter of a proposed inclosure, and to give such directions in relation to the matter of such application, or to the execution of the powers or authorities thereby proposed to be revived or executed, as the circumstances of each case shall appear to them to require.

6. *Lands taken in exchange, &c. in respect of customary lands shall be held to be copyhold, and shall be held of the same lord, &c.*—And whereas it is provided by the said act that any land taken in exchange or on partition or allotted in respect to copyhold or customary land shall be deemed copyhold or customary land, and shall be held of the lord of the same manor under the same rent and by the same customs and services as the copyhold or customary land in respect of which it may have been taken in exchange or on partition or allotted was or ought to have been held, and shall pass in like manner as the copyhold or customary land in respect whereof such exchanges, partitions, or allotments shall be made: And whereas it is expedient to enable the parties so taking such lands in exchange or on partition or as allotments to hold the same of freehold tenure; be it enacted, That, by and with the consent of the lord of the manor, and of the parties so taking such lands in exchange or on partition or as allotments, it shall and may be lawful for the said commissioners to declare that the same shall be held as of freehold tenure, on such terms and conditions as may be agreed upon between the parties, and as may be deemed just by the said commissioners, and the same land shall be held as freehold accordingly.

7. *Meetings may be adjourned without the attendance of commissioner or assistant commissioner.*—And be it enacted, That where notice shall have been given of any meeting, whether original or by adjournment, to be held by the commissioners or by an assistant commissioner, or otherwise, it shall be lawful for the commissioners or an assistant commissioner by notice to adjourn such meeting, without any commissioner or assistant commissioner giving attendance for the purpose of making such adjournment; and where notice shall have been given of a meeting by a valuer, it shall be lawful for him by notice to adjourn such meeting, without giving attendance for the purpose of making such adjournment.

8. *Notices may be given by the secretary of the commissioners, or other person appointed for that purpose.*—And be it enacted, That all notices by the said act of the 8 & 9 Vict., or by any act amending the same or referring thereto, or by this act, directed or authorized to be given

by the commissioners and assistant commissioners respectively, may be given by the secretary of the commissioners, or by any person whom the commissioners or any assistant commissioner, in conformity with the power delegated to him by the commissioners, may appoint or authorize for that purpose.

9. *Recited act deemed part of this act.*—And be it enacted, That this act shall be taken to be a part of the said recited act of the 8 & 9 Vict., and be construed therewith, and with any act amending the same or referring thereto.

10. *Act may be amended, &c.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this session.

#### QUAKERS' AND JEWS' MARRIAGES.

10 & 11 VICT. C. 58.

An Act to remove Doubts as to Quakers' and Jews' Marriages solemnized before certain Periods. [July 2, 1847.]

*Marriages of Quakers and Jews solemnized before certain dates declared valid.*—Whereas doubts have been entertained as to the validity of marriages amongst the people called Quakers and amongst persons professing the Jewish religion, solemnized in England before the 1st day of July 1847, or in Ireland before the 1st day of April 1845, according to the usages of those denominations respectively: And whereas it is expedient to put an end to such doubts; be it therefore declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That all marriages so solemnized as aforesaid were and are good in law to all intents and purposes whatsoever, provided that the parties to such marriage were both Quakers, or both persons professing the Jewish religion respectively.

#### CITY OF LONDON SMALL DEBTS COURT.

THIS Court, established or enlarged by 10 & 11 Vict. c. lxxi., was opened on October 12, by Mr. Commissioner *Bullock*, as the judge of the Sheriffs' Court sitting in the Court of Queen's Bench, Guildhall. According to the present arrangement, the Sittings will be held on *Tuesday* in each week. The new rules are not yet published, but it is expected they will be nearly the same as those in the New County Courts. They are to be settled and approved by the judges of the Superior Courts.

See the Act, p. 471, and Schedules, 504, *ante*.

#### LECTURES AT THE INCORPORATED LAW SOCIETY.

THESE Lectures will commence on Monday, the 1st November, and be continued every Monday and Friday, at 8 o'clock precisely. Mr. *Miller* will lecture on Equity and Bankruptcy; Mr. *Maynard* on Common Law and Criminal Law; and Mr. *Nalder* on Conveyancing.

#### JURISDICTION OF THE COUNTY COURTS.

##### SUMMONING DEBTORS ON UNSATISFIED JUDGMENTS BEFORE THE COUNTY COURTS ACT.

*To the Editor of the Legal Observer.*

SIR,—I cannot allow S. H.'s observations upon my answer to Tacitum's inquiry to pass unnoticed. I am aware that the inquiry was simply "whether a creditor who, previous to the passing of the New County Courts Act, obtained a judgment for a debt not exceeding 20*l.*, can summon the debtor before a judge of the New County Courts under the 1st sect. of the Small Debts Act, 8 & 9 Vict. c. 127, such court at the time of the passing of the act not being in existence"—with the addition, "Does not the New Act give jurisdiction," and my answer elucidates, by reference to the clauses of the New Act, that such act gives jurisdiction over certain unsatisfied judgements for that the 6th sect. of the act repeals the 8 & 9 Vict. c. 127, and every other act of parliament theretofore passed, so far as the same respectively relate to or affect the jurisdiction and practice of that court, or give jurisdiction to any court, or to any commissioner of the Court of Bankruptcy with respect to judgments or orders obtained in that court; that sect. 7 provides for proceedings commenced previously to the passing of the act; that sect. 98 empowers any party who has obtained an unsatisfied judgment or order in any court held by virtue of that act or under any act repealed by that act for the payment of any debt, &c., to obtain a summons, &c.; and sect. 99 provides for the commitment for frauds, &c. in incurring the debt or liability, which is the subject of the action in which judgment has been obtained, &c. I did not say the jurisdiction of the Commissioners of Bankruptcy was vested, neither did Tacitum inquire if it were, but merely if the New Act gave jurisdiction in the matter of his inquiry as before set forth, and my answer elucidated that to a certain extent it did.

The inquiry of Tacitum may be more simply answered, (if required), but not more correctly so, by saying that the New Act gives jurisdiction in all cases where the judgment has been obtained in any court held by virtue of that act or under any act repealed by that act, but in no other.

*Birmingham.*

T.

#### METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

As the Term is approaching and the time will soon arrive when the Committee of this Association will meet and deliberate on the measures to be taken in furtherance of the objects of the Association, we recommend such of our readers as have delayed sending in their names during the Long Vacation, at once to enrol themselves. It will be well to fortify the

promoters of the society by as large a number as possible. "Union is strength." Each stick separated from the bundle is easily broken: Tied together no force on earth can prevail.

**LOCAL AND PERSONAL ACTS,  
DECLARED PUBLIC,  
AND TO BE JUDICIALLY NOTICED.**

*[Continued from p. 509.]*

188. An Act for enabling the London and North-western Railway Company to make a branch line of railway from Portobello to Wolverhampton; and for other purposes.

189. An Act to empower the South Staffordshire Railway Company to make divers branch railways; and for other purposes.

190. An Act to incorporate the Manchester and Lincoln Union Railway and Chesterfield and Gainsborough Canal Company with the Manchester, Sheffield, and Lincolnshire Railway Company.

191. An Act to enable the Midland Railway Company to purchase the Mansfield and Pinxton Railway, and to alter the same, and to make a railway from the Erewash Valley Railway to the Nottingham and Mansfield Railway, with branches to Mansfield, and also to the Alfreton Ironworks.

192. An Act to vest in the Edinburgh and Northern Railway Company the undertaking of the low-water pier at Burntisland, and of the ferry between the same and Granton, and to enable the said company to extend and improve the said pier.

193. An Act to empower the Boston, Stamford and Birmingham Railway Company to make a branch railway from the Stamford and Wisbech Line of the Boston, Stamford, and Birmingham Railway at Wisbech to Wisbech Harbour, and to construct certain works at Wisbech Harbour.

194. An Act to authorize an alteration in the line of the Cork and Bandon Railway, and an extension thereof into the city of Cork, and to amend the act relating to the said railway.

195. An Act to consolidate the Aberdeen and Great North of Scotland Railway Companies.

196. An Act for improving, regulating, and maintaining the haven of Sandwich in the county of Kent.

197. An Act to enable the mayor, aldermen, and burgesses of the borough of Wisbech, to raise a sum of money; and for other purposes.

198. An Act for amending two acts of parliament, passed respectively in the 4th year of the reign of his late Majesty King George the 4th, and the 4th and 5th years of the reign of his late Majesty King William the 4th, for erecting a bridge across the river Shannon, and a floating dock and other works for the improvement of the port of Limerick.

199. An Act for better supplying with gas the parish and neighbourhood of Wakefield in the West Riding of the county of York.

200. An Act for making perpetual the provisions of an act passed in the last session of parliament, intituled "An Act for the Regulation of the Legal Quays within the Port of London."

201. An Act for better supplying with gas the town of Ashton-under-Lyne in the county palatine of Lancaster, and the neighbourhood thereof.

202. An Act for better supplying with water the city of Edinburgh and places adjacent.

203. An Act to enable the mayor, aldermen, and burgesses of the borough of Manchester in the county of Lancaster to construct water-works for supplying the said borough and several places on the line of the said intended works with water; and for other purposes.

204. An Act for supplying with water certain parts of the Staffordshire Potteries and the town of Newcastle-under-Lyme, and several townships and places adjoining or near thereto.

205. An Act for building a bridge across the river Ouse in the city of York, with approaches thereto, and for widening, altering, and improving certain streets or thoroughfares within the said city; and for other purposes.

206. An Act for the more effectually assessing, collecting, and levying the poor and other rates in the city and county of the city of Norwich, and liberties of the same.

207. An Act for amending the acts relating to the police and improvement of the burgh of Kilmarnock; and for other purposes in relation thereto.

208. An Act for extending the municipal boundaries of the burgh of Inverness; establishing a general system of police therein, and regulating the petty customs; and for other purposes relating to the said burgh.

209. An act for deepening, enlarging, improving, and maintaining the port and harbour of Inverness, and the navigation of the river Ness, and the quays and piers and other works connected therewith; for regulating the anchorage and shore dues of the said port and harbour; and for other purposes relating thereto.

210. An Act for enabling the Leeds and Thirsk Railway Company to deviate the line of their railway in Crimble Valley, to alter the proposed junction with the York and Newcastle Railway, and to divert the Leeds, Wortley, and Stanningley Turnpike Road.

211. An Act to confirm an agreement between the Treasurer and Masters of the Bench of the Honourable Society of Lincoln's Inn in the county of Middlesex and the joint vestry of the joint parishes of Saint Giles-in-the-Fields and Saint George Bloomsbury in the same county and the rector and vestry of the separate parish of Saint Giles-in-the-Fields.

212. An Act for incorporating the Landowners Drainage and Inclosure Company, and for enabling the owners of settled estates, drained, irrigated, inclosed, and improved by the said company, to charge the same for the purposes of such drainage, inclosure, and improvement.

213. An Act for repairing and keeping in re-

pair the turnpike roads in the county of Ayr; for making and maintaining new roads, and altering and improving existing roads; for rendering turnpike certain parish roads; and for regulating the statute labour and bridge money in the said county.

[To be concluded in our next.]

## ALTERCATION AT THE QUARTER SESSIONS.

It is scarcely necessary to say, on the part of this journal, that the several gentlemen of both branches of the profession who are engaged in contributing to its pages, have but one main object,—the general and permanent good of the whole profession. For the most part, our duty is confined to the collection of the earliest and most useful information on all legal subjects, but occasionally it is incumbent upon us to give utterance to such observations as the interests of the profession may require. With the greatest respect for the Bench and regard for the Bar, we are bound as faithful chroniclers to notice any deviation either of the one or the other, from that high course which each has been accustomed to pursue. We have always endeavoured to exercise our functions with moderation. An unguarded word may have escaped, but the general scope of our strictures are shaped, we think, with due courtesy and measured language.

We are informed that the observations in a former number, relating to an altercation at the Middlesex Sessions, are supposed to have had a personal application, which certainly was not intended, and have thereby inflicted pain in a quarter eminently entitled to deference and respect. Our remarks were founded altogether upon the assumption that the newspaper report of what was alleged to have occurred at the Middlesex Sessions was correct, although from internal evidence we ventured to doubt its complete accuracy, and expressed our confidence that it would turn out to be exaggerated. We have since learned that the newspaper report was incorrect in some material particulars, and does not give a faithful representation, on the whole, of what actually took place. We are assured, upon authority in which we place implicit confidence, that no expression of a coarse or offensive character was addressed from the bar to the bench, on the occasion alluded to, and no unbe-

coming excitement of manner displayed. We unaffectedly regret, therefore, if remarks, meant to have a general application, although suggested by a particular transaction, have been supposed to reflect on any individual

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Lord Chancellor.

*Jones v. Mitchell.* Aug. 4, 1847.

RIGHT TO BEGIN.

*Where both parties petition for a re-hearing, the original petitioner will be allowed to commence at the subsequent re-hearing.*

BOTH sides being dissatisfied with the judgment of Lord Lyndhurst on this case, (1 Phil. 710), petitioned for a second re-hearing before the present Lord Chancellor.

Mr. *Stuart* said, that his client was dissatisfied with a portion only of the former decree, which part alone he wished to re-argue, and he thought he was entitled to begin, as he had first presented a petition for this second re-hearing.

Mr. *J. Parker* applied for a re-hearing of the whole decree, and claimed the right to commence, as his clients were the original petitioners for a re-hearing by Lord Lyndhurst, of the decree in the court below, and now wished to re-open that petition.

The Lord Chancellor thought, that the obvious course was for the original petitioner to begin.

### *Knill v. Chadwick.*

MULTIFARIOUSNESS.

[In the report of this case in our last number, (p. 545), the following note was inadvertently omitted. It refers to that part of the Lord Chancellor's judgment in which his Lordship observes,—“Now, it has been decided in numerous cases, and, I think, first by Sir John Leach, that if one entire case is made out against one defendant, another defendant connected only with part of it cannot demur for multifariousness.”]

His Lordship probably alluded to the case of *Salvidge and others v. Hyde and others*, 5 Madd. 146, where his honour is reported to have expressed himself thus:—

“In order to determine whether a suit is multifarious, or in other words, contains distinct matters, the inquiry is not as this defendant supposes, whether each defendant is connected with every branch of the cause, but whether the plaintiff's bill seeks relief in respect of matters which are in their nature separate and distinct. If the object of the suit be simple, but it happens that different persons have as-

parate interests in distinct questions which arise out of that single object, it necessarily follows that such different persons must be brought before the court, in order that the suit may conclude the whole subject."

The demurrer in this case was subsequently allowed by Lord Eldon, (S. C. Jac. 153.) but his lordship's judgment does not impugn the principle laid down by Sir John Leach. Several cases on this subject are collected in a note to Mr. Jacob's Report.

#### Rolls Court.

*Egg v. Devey.* July 23, 1847.

#### PARTIES.—SUPPLEMENTAL SUIT.—EXECUTORS.

*To a supplemental suit for the purpose of bringing before the court the representatives of a residuary legatee, the executors are necessary parties though parties to the original bill.*

IN this case the original bill was filed by A., one of the children of four residuary legatees of B., all of whom were represented in the suit except one, with whom it was alleged that a settlement had been made, and who was said to be dead, without having any legal representative. Subsequently to the institution of the original suit, administration was taken out to this legatee, and the administrator had been brought before the court by a supplemental bill, to which none of the defendants to the original bill were parties.

Mr. Kindersley and Mr. Hallett objected, that to a supplemental bill for such a purpose, the executors must be parties, and cited *Jones v. Howells*, 4 Hare, 341. They suggested, that the proper course would have been to have amended the original bill by striking out the allegation that there was no administrator, and making the administrator a party, since it would be enough if the letters of administration were granted before the hearing.

Lord Langdale expressed his opinion, that a party who was called upon to account, had a right to know to whom he was to account; but the cause proceeded, on an understanding that the costs of the supplemental suit should be thrown on the estate.

#### Vice-Chancellor of England.

*Ward v. Biddles.* July 24, 1847.

#### CONSTRUCTION OF A WILL.—TRUST FOR MAINTENANCE.

*Where a sum of money was given to T. B. to bring up and maintain F. B., Held, on the construction of the will, that the sum was given absolutely to T. B.*

THE testatrix, Mary Biddles, by her will dated July, 1841, devised partly as follows: "I give, devise, and bequeath the sum of 1,000*l.* to my nephew Thomas Biddles, son of my brother James Biddles, to bring up and maintain my natural and dear son Frederick

Biddles, so commonly called or known." She also gave and bequeathed all the rest, residue, and remainder of her monies, securities for money, and personal estate and effects of what nature or kind wheresoever, and whether in possession or expectancy, unto and equally between her four natural and dear children, namely, T. H. Biddles, M. Biddles, G. Biddles, and the said Frederick Biddles, or so commonly known or called. The will then contained directions for investing the residue for the benefit of her children. The question now argued before the court was, whether the 1,000*l.* legacy was to T. Biddles absolutely, or whether he only took it in trust for Frederick Biddles.

Mr. Rolt and Mr. Boyle contended, that T. Biddles took the legacy absolutely, citing *Thorp v. Owen*, 2 Hare, 607; *Benson v. Whittam*, 5 Sim. 22.

Mr. Webb, for Frederick Biddles, urged that T. Biddles could be considered merely as a trustee for him of the fund.

The Vice-Chancellor said, that if F. Biddles had died in the lifetime of the testator, the legacy would not have lapsed. The testatrix evidently meant to give money for the maintenance of her children, she had expressly done so in a subsequent portion of her will, and it was impossible to make out a trust of this 1,000*l.* for Frederick, especially as he took a share of the residue.

#### Vice-Chancellor Knight Bruce.

*Westby v. Westby.* June 3, 1847.

#### INFANTS.—STAYING PROCEEDINGS.

*A reference to the Master to inquire which of two suits it will be most for the benefit of the infants shall be prosecuted, does not, as of course, stay the proceedings in the suits pending the reference, but the matter is in the discretion of the court.*

Two suits were instituted in the name of infants for similar purposes, and a reference was made to the Master to inquire which of the two suits was most for the benefit of the infants to be prosecuted. Pending the reference, a motion was made on behalf of the plaintiffs in one of the suits, which was opposed on the ground of irregularity, the reference being a stay to all proceedings in both suits.

Mr. Cooper, Mr. Russell, Mr. Lee, Mr. Torriano, Mr. Haldane, Mr. Steere, and Mr. Schomberg, for the several parties.

The Vice-Chancellor having directed inquiry to be made among the registrars on the point, whether the common form of order referring it to the Master to inquire which of the two suits is most for the benefit of the infants has the effect, as of course, of staying proceedings in both suits pending the reference, Mr. E. D. Colville, jun., certified that he had inquired of several of the registrars, including Mr. Colville, and all agreed that it did not, although, doubtless, as a matter of prudence, it generally had that effect, and it was open to the court to entertain any application it may think fit, or to

direct it to stand over until the report is made. In *Sullivan v. Sullivan*, 2 Mer. 40, the Lord Chancellor refers to the practice. He, Mr. E. D. C., had looked at the entry of that order in the Report Office: it did not contain any direction to stay proceedings, nor does the common order. The practice is, after report made, to apply for an order to stay proceedings in the defeated suit.

### Common Pleas.

*Richardson v. Tubbs*. Easter Term, 1847.

HIGHWAY RATE. — EXEMPTION UNDER LOCAL AND PERSONAL ACT. — TRESPASS ACT. — TRESPASS AGAINST JUSTICE OF THE PEACE.

*A local and personal act, providing that the plaintiff, amongst others, being rated under it, within a certain district, should be "released and free from all rates and assessments towards the paving and lighting any other street," &c., does not exempt the plaintiff from liability to be assessed for a rate made under the General Highway Act, on the whole parish.*

*The circumstance that part of the latter rate might be applied to paving as well as lighting, is not sufficient for that purpose, and does not render a magistrate issuing a distress warrant liable in an action of trespass.*

THIS was a special case. The plaintiff's goods had been seized under a distress warrant under the hand and seal of the defendant, acting as a justice of the peace, in order to satisfy certain arrears of a highway rate for the parish of St. Mary, Kensington, the plaintiff having been rated in respect of the occupation of a house forming part of the Norland estate, in that parish. The payment of the rate was objected to by the plaintiff on the ground that by the provisions of the local and personal act, 6 Vict. c. 33, entitled, "An Act for the improvement of the Norland estate, in the parish of St. Mary Abbots, Kensington, in the county of Middlesex," he was exempt from being rated to the highway rate in question. The act, after providing for paving and lighting the Norland estate, and levying the necessary rates by the 83rd section, enacts "that every inhabitant or owner who shall be assessed for the rates made under this act for any lands or tenements within the limits of this act, shall be released and free from all rates and assessments towards the paving and lighting any other street, road, or place within the parish of St. Mary Abbots, Kensington, in respect of such lands or tenements." The plaintiff had been assessed under the local and personal act, 6 Vic. c. 33, and at the trial at Westminster, after Michaelmas Term 1845, had obtained a verdict in the action of trespass, subject to the present case.

*Channell*, Sergeant, for the plaintiff. The rate under the General Highway Act is applicable to paving, and the local and personal

act releases from a rate made for that purpose, nor can it make any difference that the rate exempted from is one for paving and lighting. There could have been no appeal against the rate in dispute, as it was rated as against the parish inhabitants, with the exception of those on the Norland estate; an action of trespass, therefore, was the only proper remedy to try the validity of the rate.

*Pashley*, for the defendant. Some portion of the rate being applicable to paving cannot make it a rate for paving and lighting; the exemption, therefore, was not made out. Besides the defendant acting as a justice of the peace, cannot be made liable in an action of trespass for the subsequent application of the rate raised. (He was then stopped by the court.)

*Channell*, Serjeant, was heard in reply, and referred to the case of *The Governors of Bristol v. Wait*, 1 Ad. & El. 267.

*Wilde*, C. J. I think the exemption claimed by the plaintiff has not been made out. Here is a general act which imposes a general liability on the several parishes in England for the repair of the roads made for the convenience of the public in general, and whatever local liabilities arise in that way in the parish in question are by that act imposed upon its inhabitants at large; and thus throws upon them the onus of establishing any exemption they may claim from such liabilities. The question then in the present case is, whether or not the plaintiff has shown that he is not liable to be rated to the rates which form the subject of the action. Now, the ground on which he claims an exemption in that respect is, that he has before been assessed under the local and personal act, 6 Vict. c. 33, the 83rd section of which releases him from "all rates and assessments towards paving and lighting any other streets, roads, or places in the parish of St. Mary Abbots, Kensington;" it being contended that the rate in question may, under certain authorities, be in part applied to lighting and paving. Under the General Highway Act, authority is given for imposing rates for the repairs of the highways within that act. Three rates are to be made out by the surveyor, afterwards allowed by the justices, and a certain sum by that means raised, the application of which is under the control of quite another authority. At the time, therefore, that such rate is raised *non constat* to what purposes it will be applied, and it is impossible to say that because the rate may possibly be devoted to purposes not legally within the act, or a portion of it may be applicable to paving and lighting, there can be any bare anticipated exemption of the plaintiff in this case. The objection to the application of the rate to particular purposes is not an objection on which the plaintiff can ground an exemption from being included in such rate. On the whole, therefore, I think the rate was well made, that the plaintiff was exempt from it, and that the ground of the present action has completely failed.

*Coltman*, J., concurred.



*Cresswell, J.* The judgment of the court ought to be for the defendant. The plaintiff had property in Kensington, which but for the 6th Vict., c. 33, would clearly be liable to the highway rates, and the onus of making out an exemption lies on him. In order to do this, the 83rd section of the 6th Vict. is relied upon, the words of which are "released and free from all rates and assessments towards the paving and lighting any other street, road," &c. Now this is not a rate "towards the paving and lighting," or towards the paving or lighting, and it is not contended that the local and personal act altogether exempts the inhabitants of the Norland estate from rates. The surveyor, therefore, had made a proper rate in the ordinary form, and the justice had nothing to do with the application of the rate after it was made. There was nothing at the time to show in what way the rate would be applied, and how then can an action of trespass lie in the present case for enforcing that rate?

*Williams, J.*, concurred.

Judgment for the defendant.

### Exchequer.

*Clark v. Chaplin.* Trinity Term, June 12, 1847.

JOINT-STOCK COMPANY.—LETTER OF ALLOTMENT.—RECEIPT.—STAMP.

*The acknowledgment by a banker of the receipt of money paid as deposit upon shares allotted in a joint-stock company, does not require a receipt stamp.*

*Where a plaintiff seeks to recover back the amount of deposit paid by him upon the allotment of shares in a projected joint-stock company, which is afterwards abandoned, he must give in evidence the letter of allotment.*

ASSUMPSIT for money had and received for the use of the plaintiff: Plea. *non assumpsit*.

At the trial before *Pollock, C. B.*, it appeared that the plaintiff sought to recover the sum of 100*l.*, being the amount of deposits paid upon an allotment of shares in the London and Westminster Water Company. The action was brought on the authority of *Walstab v. Spottiswoode*, 15 M. & W. 501, the scheme having been abandoned. The plaintiff had applied for shares in the company, and had received a letter in reply, allotting him 20 shares, requesting him to pay the deposit into the bank of Jones, Lloyd and Co. On the 8th June 1841, the plaintiff accordingly paid 100*l.*, being the amount of the deposit into that bank, and took the following receipt.

"London and Westminster Water Company.  
London, Feb. 8, 1841.

"Received one hundred pounds, to be placed to the account of W. Chaplin, J. Devear, J. P. Dougall, J. Worlman, and J. P. Clarke.

"For Messrs. Jones, Lloyd & Co., 100*l.*

"This receipt not transferrable. The party

to whom these shares are allotted is requested to attend immediately at the office of the company, No. 7, St. Martin's Lane, Trafalgar Square, with this receipt, to sign the parliamentary contract, when the receipt will be exchanged for the shares. Monday the 8th Feb. is the last day for such attendance."

The above document was given in evidence by the plaintiff, stamped with an agreement stamp, and was objected to by the defendant, on the ground that it ought to have had a receipt stamp. The plaintiff also gave in evidence two letters, one of the 8th Feb. 1842, in which he requested to have his money returned, as he had not received the shares; the other of the 17th Feb., from the secretary of the company, in answer, in which he stated, that every effort was being made to go to parliament that session. The plaintiff did not give in evidence the letter of allotment, and it was objected that it ought to have been produced, as it contained the terms upon which the money was deposited. The learned judge thought, that the letter of the 17th Feb. was an admission, that the deposit was to be returned if the project was not proceeded with in that session of parliament, and he directed the jury to find a verdict for the plaintiff for 100*l.* A rule having been obtained to enter a nonsuit,

*Martin and Willis* showed cause. The acknowledgment by the bankers of the receipt of the deposit did not require a stamp. The money was not paid in discharge of a debt, but was only a deposit. *Tomkins v. Ashby*, 6 B. & C. 541; *Huxley v. O'Connor*, 8 Car. & P. 204. The case comes within the exemption of the Stamp Act, 55 Geo. c. 184, schedule H., "Receipt," which exempts from duty receipts for money deposited in the hands of any banker to be accounted for on demand. Secondly, it was not necessary for the plaintiff to give in evidence the letter of allotment. The scheme having been abandoned, the plaintiff was entitled to recover as upon a failure of consideration. *Walstab v. Spottiswoode*, 15 M. & W. 501. *Nockels v. Crosby*, 3 B. & C. 814.

*Gurney and Ogle* in support of the rule. The result does not come within the exemption of the Stamp Act, as the money was not deposited with the bankers "to be accounted for on demand," *Catt v. Howard*, 3 Stark. N. P. C. 3. Secondly, the plaintiff was bound to produce the letter of allotment, as it was the only evidence of the terms upon which the money was deposited.

*Pollock, C. B.* We will take time to consider the point as to the letter of allotment. With respect to the other point, I think a receipt stamp was not necessary.

*Alderson, B.* I am of the same opinion. The money was to be accounted for on demand, for the defendant might have drawn it out at any time.

*Rolfe and Platt, B.* concurred.

Rule discharged as to that point: as to the other,

*Cur. ad. vult.*

The judgment of the court was delivered by

*Rolfe, B.* The objection which we took time to consider was whether the letter of allotment ought not to have been produced. We think the letter was certainly requisite to show the terms upon which the deposit was paid. The Lord Chief Baron thought at the trial that the letter of the 17th of February was evidence of an admission that the deposit was to be returned if the act of parliament was not proceeded with that session; but we think that the letter of allotment should undoubtedly have been produced; the rule must therefore be absolute.

Rule absolute.

## ANALYTICAL DIGEST OF CASES,

REPORTED IN ALL THE COURTS.

### Common Law Courts.

#### PLEADINGS.

[Concluded from page 556, ante.]

#### LANDLORD AND TENANT.

*Elegit.*—Covenant for rent on a lease. Plea, that before the lease was made, one *T.* impleaded the plaintiffs, and had judgment of *elegit* against their lands, &c.; that the inquisition found plaintiffs seized of the demised premises then leased to *B.*, subject to two mortgages for years; that the sheriff delivered the demised premises to *P.*, to hold, &c., till his damages and costs should be levied thereout; that, before the rent became due, defendant was evicted by *P.*, who entered, and then ejected, *expelled*, put out, and removed defendant therefrom, and kept and continued him so ejected, &c.; that 1,000*l.* was still due to *P.* which was not levied. Replication traversed the eviction in the words of the plea. At the trial the lease, *elegit*, and inquisition were put in, and it was proved that *P.* had called on defendant to pay him rent, or he, *P.*, would turn him out, on which defendant attorned to him, without privity of the plaintiffs, his lessors: *Held*, that the plaintiffs were entitled to recover, as *P.*'s *elegit* only entitled him to the reversion expectant on the mortgages by the lessors. *Held*, also, that the expulsion, as pleaded, was not established by the evidence.

*Semble*, that if a party, having a paramount right to evict a party in occupation of premises, goes to him claiming to exercise his right, on which the tenant consents to change the title under which he holds, and attorns to the claimant accordingly, that would be equivalent to an expulsion. *Mayor, &c., of Poole v. Whitt*, 15 M. & W. 571.

#### LIBEL.

1. *Plea.—Demurrer.*—A declaration for libel stated, that the plaintiff sought admission into a club, and gave a crack entertainment a few days before he was to be elected; that he afterwards was blackballed; and that on the next morning he bolted; and that some of the tradesmen had to lament the fashionable character of his entertainment.

Plea, that the plaintiff suddenly left and quitted the town, leaving divers tradesmen to whom he owed money unpaid. *Held*, that the plea was bad, inasmuch as the libel imputed a fraudulent evasion of creditors, and the plea only stated something which was not necessarily fraudulent, and was not averred to be so. *O'Brien v. Bryant*, 4 D. & L. 341.

2. *Plea.—Demurrer.*—A declaration for libel stated, that the plaintiff sought admission into a club, and gave an entertainment a few days before he was to be elected; that on the next morning he bolted; and that some of the poor tradesmen had to lament the fashionable character of his entertainment.

Plea, that the plaintiff did suddenly leave and quit the town, without paying debts contracted by him with divers persons in the town with intent to defraud and delay them, whereby the said persons remained unpaid: *Held*, bad, for not stating the names of the persons alleged to have been defrauded. *O'Brien v. Clement*, 4 D. & L. 343.

3. *Apology, &c., under 7 & 8 Vict. c. 96, not pleadable with not guilty.*—In an action for a libel published in a newspaper, the special plea of apology and payment into court, given by the stat. 6 & 7 Vict. c. 96, s. 2, cannot be pleaded along with not guilty to the same part of the declaration. *O'Brien v. Clement*, 15 M. & W. 435.

#### LOCAL ACT.

*Proviso and exception.—Condition precedent.*—A local act, (11 G. 4, c. viii.,) for paving and improving the town of Salford, appointed commissioners for putting it into execution, and authorized them to pave new streets, and provided that the expenses of such new pavements should be paid and reimbursed to the commissioners by the owners or occupiers of the land adjoining the streets, in manner therein mentioned, and empowered the commissioners to recover such expenses by action at law. A subsequent section commencing, "Provided always, and be it enacted," directed, that before the commissioners should cause the streets to be paved as aforesaid, they should, in the first place, give notice to the owner or occupier of every house, land, &c., adjoining the street, requiring him to pave the same as the commissioners should direct; and if any such owner or occupier should for six months neglect to pave pursuant to the notice, then it should be lawful for the commissioners, and they were thereby required, to cause the same to be done, and to recover the expenses from such owner or occupier, as therein-before mentioned: *Held*, that the giving of this notice was a condition precedent to the commissioners executing the paving themselves, and charging the expenses on the owner or occupier, and that it must be averred in the declaration in an action brought under the act for the recovery of such expenses. *Mayor, &c., of Salford v. Ackers*, 16 M. & W. 85.

#### MALICIOUS ARREST.

See Arrest.

## MARRIED WOMAN.

**Arrest under a *ca. sa.***—A married woman may be arrested under a writ of *ca. sa.* for costs incurred in an action in which she is joined with her husband on the record.

A. and wife brought an action against B. for slander of the wife, verdict for the defendant, and judgment for the costs, under which A. and his wife were arrested. The wife was afterwards discharged, and A. brought an action on the case against the defendant and his attorney for the arrest of his wife, and the defendants in their plea set out the proceedings in the former action.

The plea was held good on general demurrer. *Newton v. Boodle and others*, 33 L. O. 405.

## NEGLIGENCE.

1. **Navigation in public river.—Nuisance.**—In a declaration on the case for injuring plaintiff's oyster beds in a river by improper navigation of defendant's vessel, averments, that plaintiffs were lawfully possessed of oyster beds situate in the river and covered with water; that defendant was possessed of a ship of a certain size and draught then navigating the said river under the management of defendant's servants; that the tide ebbed and flowed in that part of the river; and that, at certain periods and states of the tide there, the depth of water covering the said oyster beds was insufficient to float the said ship, "as the defendant and his said servants before and at the time of the committing," &c., "well knew,"—are not equivalent, after verdict, to a formal allegation of notice to defendant that the oyster beds existed and were liable to be injured by attempting to pass over them at the times mentioned.

To a count alleging that plaintiffs were possessed of oyster beds in a part of the river, and defendant of a vessel thereon, and that he navigated the vessel over the said part so negligently and at such unseasonable and improper times and states of the tides that she struck the bottom of the said river and injured the oyster beds; defendant pleaded: That the said part of the said river, before and at the time when, &c., was open to the sea, and within the flux and reflux of the tide, and was a public navigable river, and the Queen's highway for all her subjects, with their ships and vessels, "to navigate, sail, pass and repass, in, upon, through, over, and along the same and all parts thereof every year, and at all times of the year, and at all times and states of the tide," at their free will, &c. Held, after verdict, a sufficient plea in denial of having navigated at unseasonable and improper times; though it might have been bad on special demurrer, as argumentative.

The liberty of passage on a public navigable river is not suspended when the tide is too low for vessels to float. The public right in this respect includes all such rights as, with relation to the circumstances of each river, are necessary for the convenient passage of vessels along the channel. It is, therefore, no excuse,

if a vessel which cannot reach her place of destination in a single tide remains aground till the tide serves; although, by custom or agreement, a fine may be payable to the lord of the soil for such grounding.

If property (as oysters) be placed in the channel of a public navigable river so as to create a public nuisance, a person navigating is not justified in damaging such property by running his vessel against it, if he has room to pass without so doing; for an individual cannot abate a nuisance if he is no otherwise injured by it than as one of the public. And, therefore, the fact that such property was a nuisance is no excuse for running upon it negligently. *Mayor of Colchester v. Brooke*, 7 Q. B. 339.

Cases cited in the judgment: *Ball v. Herbert*, 3 T. R. 253; *Rex v. Montague*, 4 B. & C. 598; *Davies v. Mann*, 10 M. & W. 546.

2. **Ram.**—A declaration alleged that the defendant wrongfully kept a ram, well knowing that the said ram was accustomed to butt and injure mankind, and that whilst the defendant kept the same, it did butt and gore the wife of the plaintiff: Held, on motion in arrest of judgment, that the declaration was sufficient, without averring that the defendant negligently kept the ram. *Jackson v. Smithson*, 4 D. & L. 45.

Case cited in the judgment: *May and Wife v. Burdett*, T. T. 1846, not yet reported.

## NEW ASSIGNMENT.

See *Trespass*, 3.

## NON-JOINDER.

**Joint-contractors.—Abatement.**—An affidavit verifying a plea of non-joinder of co-contractors with the defendant, stated the residence of one as "No. 20, Gower Street, Bedford Square," and of another as "High Street, Canterbury." The court, on affidavit by the plaintiff that inquiries had been made at the respective places mentioned, and that no such persons as those named were living there, set aside both the plea and the affidavit, although the defendant showed that the mistake had been made accidentally, and that the one party was to be found at "No. 22," instead of "No. 20," and that his name was to be found in the Post Office Directory, and other similar works of reference, as residing at No. 22; and that the other party was well known in Canterbury, and that he lived in a street adjoining to the one named. *Newton v. Stewart*, 4 D. & L. 89.

## NUISANCE.

See *Negligence*, 1.

## PAYMENT, PLEDING.

**Ready money transaction.**—*Semble*, that, in an action for the price of goods, the defendant cannot prove, under a plea of *non assumpsit*, or never indebted, that the dealing was for ready money, and the goods paid for when delivered; but the payment must be pleaded. *Littlechild v. Banks*, 7 Q. B. 739.

## PAYMENT INTO COURT.

1. **Informal commencement.**—*Plea.*—A plea

of payment of money into court with a commencement, "that the plaintiff ought not to maintain his action," is bad on special demurrer, notwithstanding the plea concludes with a prayer of judgment, if the plaintiff ought further to maintain his aforesaid action. *Rosling v. Muggeridge*, 4 D. & L. 298.

2. *Debt.—Form of Plea.*—A plea of payment into court, in an action of debt, must be pleaded to the damages, as well as to the debt; and the form of plea given by the rule of Trinity Term, 1 Vict., must be varied to meet the case. *Lowe v. Steele*, 15 M. & W. 380.

3. Justices and other officers paying money into court under particular statutes, are not bound to state in the plea of payment into court the character in which they make the payment.

To an action for assault and battery, the defendant pleaded payment into court of 25*l.*, pursuant to the rule of Trinity Term, 1 Vict. c. 7. The plaintiff replied damages *ultra*; on which issue was joined, and the defendant obtained a verdict: *Held*, that the plaintiff was not entitled to judgment *non obstante veredicto*, because, although the plea of payment into court is prohibited in an ordinary action of assault and battery, by the 3 & 4 W. 4, c. 42, s. 21, it did not appear upon the record that the defendant was not a person entitled under some other statute to pay money into court by way of amends in such an action. *Aston v. Perkes*, 15 M. & W. 385.

And see *Estoppel*, 2.

#### PLEA TO PART.

*Signing judgment as for want of a plea.*—If a defendant, not under terms of pleading issuably, plead *non assumpsit* to a declaration containing a count on a bill of exchange, and also a count on an account stated, the proper course for the plaintiff is, to demur specially, and he ought not to treat the plea as a nullity, and sign judgment generally; and where he had done so, the court refused to amend the judgment by confining it to the first count, and entering a *nolle prosequi* as to the other. *Eddison v. Peagram*, 4 D. & L. 277.

#### PLEADING TO ONE COUNT.

*Answering another count.*—To a declaration containing two counts, the first on a promissory note for 15*l.*, the second in 30*l.* on an account stated, the defendant pleaded to the first count a plea alleging special circumstances as to the making of the note, which showed that it was given without consideration and upon a misrepresentation of facts; and he then pleaded, as to 15*l.*, parcel of the money and causes of action in the last count mentioned, that the making of the note in the first count mentioned was and is the said account stated in the last count mentioned, so far as the same relates to the said sum of 15*l.*, parcel, &c., and that the several allegations and statements by the defendant made in his first plea were and are true, *modo et forma*.

On special demurrer to the second plea, on

the ground that, though it professed to answer only a part of the count on the account stated, it, nevertheless, presented an answer to the first count also: *Held*, that the plea was good. *Hammond v. Dayson*, 15 M. & W. 373.

#### PROMISSORY NOTE.

3 & 4 Anne, c. 9.—*Assumpsit.* Declaration stated, that defendant made his promissory note, and thereby promised to pay to his order 500*l.*, two months after date, and indorsed it to plaintiff. Demurrer, on the ground that a note payable to the maker's order was not a legal instrument, and could not be negotiated: *Held*, that the count was bad; for the instrument declared on as indorsed to plaintiff was not a promissory note within statute 3 & 4 Anne, c. 9, s. 1.

*Argumentative plea.*—2nd count, that the defendant made his other promissory note, and thereby promised to pay the bearer 500*l.*, two months after date; that defendant delivered the same to plaintiff, who was and still is the bearer thereof. Plea, that defendant made a certain instrument, whereby he promised to pay to the order of him, the defendant, 500*l.*, as alleged in the first count, without this, that he made any other promissory note whereby he promised to pay the bearer the sum of money mentioned in the second count, as in that count alleged. *Held*, bad, on demurrer, as amounting to an argumentative denial of defendant's having made the note. *Flight v. Maclean*, 16 M. & W. 51.

#### RECITALS IN DEED.

*Estoppel.—Covenant in gross.—Departure.*—Covenant declaration that, by indenture between plaintiffs and A., since deceased, of first part; B., therein described as guardian of C. and D., minors and devisees under the will of E., deceased, of second part; and defendant of third part; after reciting that the parties of the first part, and B. in right aforesaid, were the owners of the closes, &c., thereafter described, subject to mortgage for 3,500*l.*, the interest whereof was payable half-yearly at the office of W., and had agreed to let the same to defendant, it was by the indenture expressed and purported that plaintiffs and A., with the consent and approbation of B., did demise the closes to defendant, his executors, &c., for seven years, yielding and paying therefore yearly during the demise 153*l.* 11*s.*, at the office of W. aforesaid, in part of the interest on the mortgage, by equal half-yearly payments: covenant by defendant with plaintiffs and A., his heirs, &c., to pay the yearly sum at the place and in manner before-mentioned: breach, non-payment of parcel of a half-yearly sum, due since death of A.: averment, that plaintiffs and A., or any or either of them, never had any reversion in the premises purported to be demised.

Plea, that the reversion of the demised premises, expectant on the determination of the demise, was, at the making of the indenture, and from thence to the death of A., in plaintiffs and A., and, from her death until making

of the after-mentioned indenture, was in plaintiffs, who, before breach, assigned the reversion by indenture to S.: verification.

Replication, that no reversion in the supposed demised premises, expectant, &c., was at the time, &c., or from thence, &c., in plaintiffs and A., or, from her death until, &c., in plaintiffs: conclusion to the country.

*Held*, on general demurrer,

That the recitals showed the lessors to have had only an equitable title.

That the facts being disclosed on the face of the lease, neither party was estopped from denying that the lessors had a legal reversion.

That the covenant for payment of an annual sum was a covenant in gross.

\*That the declaration was not inconsistent or repugnant.

That the plea was bad for passing over the averment in the declaration that the plaintiffs had no reversion, and, assuming that they had a reversion, averring that they had assigned it.

That the replication was not a departure.

*Quære*, whether the annual sum covenanted to be paid was a reservation.

*Semble*, that the lessee was estopped by the recitals in the lease from averring that the lessors had a legal reversion. *Pargeter v. Harris*, 7 Q. B. 708.

Case cited in the judgment: *Goldswarth v. Knights*, 11 M. & W. 337.

#### RECITAL OF STATUTE.

The declarations recited the statute 7 G. 4, c. 46, as "an act of parliament made and passed in the 7th year of the reign, &c., for (amongst other things) the better regulating co-partnerships of bankers in England:" *Held*, a sufficient recital of the act. *Esdaile v. Maclean*, 15 M. & W. 277.

#### REPLICATION.

Where plaintiff, instead of demurring to a double plea, replies double, he must not reply argumentatively, or by setting up fresh matter without confessing and avoiding the plea. *Kemp v. Wate*, 15 M. & W. 672.

See *Argumentative Averment*, 1; *Heriot Custom*.

#### SEPARATE COUNTS.

*New rules*.—A surveyor contracts for the performance of certain surveys for a railway, payment to be made by instalments, the two first at certain fixed periods, the third when the plans and sections are deposited, and the last when it is certified that the standing orders of the House of Commons have been complied with. In an action on the contract by the surveyor, a count on the special contract, and the common count for work and labour, are allowable under the Reg. Gen. H. T. 4 W. 4, rule 5. *Bulmer v. Bougfield*, 34 L. O. 35.

#### SET-OFF.

1. *Debt*.—A declaration in debt contained three counts, in each of which 6l. 10s. was claimed. The defendant pleaded a set-off covering the aggregate of the sums in the de-

claration. The particulars of demand stated the action to be brought to recover 6l. 10s. for money lent. At the trial the defendant proved a set-off above 6l. 10s. *Held*, that the plea admitted 6l. 10s. to be due on each count, and that the plaintiff was entitled to a verdict. *Roche v. Champein*, 34 L. O. 158.

2. *Assumpsit*.—To assumpsit by A., B., and C. against D., for money had and received, D. pleaded, that, before the money had been received, &c., the plaintiffs carried on the trade of founders in partnership; that, while they were such partners, A., with the priority and concurrence of B. and C., employed D., an auctioneer, to sell certain property belonging to the firm; that, at the time A. so employed D. to sell the said property, and at the time of the sale thereof, and at the time when the debt after-mentioned became due from A. to D., D. believed that A. was the sole and exclusive owner of the property, and had full power and authority to sell the same, and to receive the proceeds for his own sole use, D. having no notice or knowledge that B. and C. had any right or interest in the property; that, after A. had so employed D., and before D. had any notice that A. was not sole and exclusive owner of the property, or of the proceeds thereof, A. became indebted to D. in a sum exceeding the moneys in the declaration mentioned, out of which D. was ready and willing to set-off and allow the sums in the declaration mentioned.

The plaintiffs replied, that, at the time of selling the property, D. had knowledge that A. was not sole and exclusive owner of the property.

*Held*, on demurrer to the replication, that the plea was bad, inasmuch as it did not allege that A. appeared as sole owner of the property with the assent or by the default of his partners; and therefore, that it was a mere attempt to set-off a debt due from one partner against a debt due to the firm. *Gordon v. Ellis*, 2 C. B. 821.

\* Case cited in the judgment: *Stacey v. Decy*, 1 Esp. N. P. C. 469, n.; 7 T. R. 361, n.

3. *Reduction of damages*.—*Execution*.—Where a set-off is pleaded to the whole declaration, but the defendant succeeds in proving a part only, he is entitled to reduce the plaintiff's claim *pro tanto*.

*Quære*, whether money levied under an execution, and not paid by the party directly, and in money, can be made the subject of set-off as money paid? *Rodgers v. Maw*, 4 D. & L. 66.

Cases cited in the judgment: *Collins v. Collins*, 2 Burr. 820; *Tuck v. Tuck*, 5 M. & W. 109; *Cousins v. Paddon*, 2 C., M. & R. 547; *Moore v. Bullin*, 7 A. & E. 595; *Barnes v. Butcher*, 9 C. & P. 725; *Merryweather v. Nixan*, 8 T. R. 186; *Maxwell v. Jameson*, 2 B. & A. 51; *Barclay v. Gooch*, 2 Esp. 571.

4. Where the amount proved under a plea of set-off, pleaded to the whole declaration, does not cover the plaintiff's demand in the action, the defendant cannot have a verdict on the plea for the amount proved, but it will go

in reduction of damages. *Rodgers v. Mow*, 15 M. & W. 444.

Cases cited in the judgment: *Collins v. Collins*, 2 Barr. 820; *Tuck v. Tuck*, 5 M. & W. 109; *Cousins v. Paddon*, 2 C. M. & R. 547; *Moore v. Butlin*, 7 A. & E. 595; 2 N. & P. 436; *Baines v. Belcher*, 9 C. & P. 725.

#### SLANDER.

1. *Recital.—Demurrer.*—In an action for slander, the declaration must positively, and not by way of recital, allege the speaking of the slanderous words; therefore, a declaration which commences "For that whereas" the defendant contriving to injure the plaintiff, in a certain discourse, spoke, &c., is bad, on special demurrer. *Brown v. Thurlow*, 4 D. & L. 301.

2. *Case.* Declaration stated, for that *whereas* the defendant contriving and wickedly intending to injure the plaintiff, to wit, on, &c., in a certain discourse, in the presence of, &c., spoke and published of and concerning the plaintiff, the false, malicious, and defamatory words following, stating the words, and averring special damage to the plaintiff in his business: *Held*, bad on special demurrer, for charging the grievances to have been committed by the defendant by way of recital only, and not directly or positively. *Brown v. Thurlow*, 16 M. & W. 36.

#### STRIKING OUT COUNTS.

*Same subject-matter.—Lateness of motion.—Appeal to court from judge.*—A defendant applied by summons at chambers to strike out counts on the ground that they related to the same subject-matter of complaint. The summons was heard on the 14th November, when it was dismissed with costs. On the 19th the defendant made a similar application to the court: *Held*, too late. *Seem*, that an appeal lies to the court where a judge has refused to make an order. *Chapman v. King*, 4 D. & L. 311.

#### TENDER OF RELEASE.

To an action on a bill of exchange, &c., the defendant pleaded that it was agreed between the plaintiff and other creditors of the defendant, that a sum of 4s. 6d. in the pound should be paid by the defendant to the plaintiff and the other creditors, and that, upon receiving the money, the plaintiff and other creditors should execute a release of their debts; that a release was prepared for execution; and that the creditors, except the plaintiff, received the composition and executed the release; and that the defendant had always been ready and willing to pay the plaintiff the 4s. 6d. in the pound upon the plaintiff executing such release. *Seem*, that the plea was bad, for want of an averment that the defendant tendered a release to the plaintiff for execution. *Postling v. Mugeridge*, 4 D. & L. 298.

#### TRAVERSE.

1. *When too large.*—To a count by indorsee against acceptor of a bill of exchange, the defendant pleaded, that, after the accruing of the causes of action in the declaration, and before

the commencement of the suit, the defendant and plaintiff accounted together of and concerning the said causes of action, and all other claims and demands then being between the plaintiff and the defendant; and that, on that accounting, a certain sum only was found due to the plaintiff, which sum the defendant paid, and the plaintiff received in full satisfaction of the sum so due and owing as last aforesaid. The plaintiff replied that he and the defendant did not account together of and concerning the causes of action in the declaration, and of all other claims and demands then being between the plaintiff and the defendant, *modo et formâ*: *Held*, on demurrer, that the traverse was well taken. *Sutton v. Page*, 3 C. B. 204.

2. *Divisible allegation.*—To a declaration on a bill of exchange for 120l. 5s., the plea was, that the plaintiff and defendant accounted together concerning the causes of action in the declaration mentioned, "and all other claims and demands then being between the plaintiff and defendant;" that on such accounting the sum of 50l. was found due from the defendant to the plaintiff; and that that sum was paid by the former, and received by the latter, in satisfaction. The plaintiff replied that he and the defendant did not account concerning the causes of action in the declaration mentioned, "and all other claims and demands between them." The defendant demurred specially, on the ground that the traverse taken was too large. The court held the traverse good, as the allegation of accounting in the declaration was not divisible. *Sutton v. Page*, 4 D. & L. 171.

#### TRESPASS.

1. *Justification as acting in aid of constable.*—Trespass for breaking and entering plaintiff's house. Plea, a justification by defendant, as acting in aid of a constable to whom a warrant had been issued to give possession to plaintiff's landlord, *P.*, under stat. 1 & 2 Vict. c. 74. The plea stated the holding of plaintiff under *P.*, and the terms; that the reversion in fee was in *P.*; notice to quit; *P.*'s right to possession; plaintiff's refusal to quit; notice by *P.* of his intention to proceed under the act; *P.*'s application to the justices; his complaint; plaintiff's non-appearance; *P.*'s proof to the justices of the matters of his notice and complaint, and of his right to possession; and the issuing of the warrant by the justices. *Replication de injuriâ*.

*Held*, good, on special demurrer; for that all the above facts necessary to constitute the jurisdiction might be traversed in that form, even assuming that section 5 does not protect persons other than peace officers and not named in the warrant, acting in aid of the constable, and would, therefore, not limit the extent of the traverse. As to which assumption, *quære*. *Edmunds v. Pinniger*, 7 Q. B. 558.

2. *Justifying breaking and entering dwelling-house on suspicion of felony.*—A plea justifying the breaking and entering a house, without warrant, on suspicion of felony, ought distinctly to show, not only that there was reason

to believe that the suspected person was there, but also that the defendant entered for the purpose of apprehending him. *Smith v. Shirley*, 3 C. B. 142.

3. *De injuriâ*.—*New assignment*.—*Impounding distress in house of tenant*.—Trespass for breaking and entering plaintiff's dwelling-house, locking the doors, and expelling the plaintiff. Plea, justifying all the trespasses, except the expulsion, under a distress for rent, alleging that defendant kept and impounded it in the dwelling-house, &c., and in order safely to impound and keep it, necessarily locked and fastened the doors of the dwelling-house, and afterwards caused the goods to be duly appraised and duly sold in satisfaction of the rent and costs of distress and sale. Replication, that defendant broke, &c., the house, locked the doors, and seized, took, and converted the goods of his own wrong and for another and different purpose than that mentioned in the plea, i. e., for the purpose of ejecting, &c., the plaintiff from the possession of the dwelling-house, concluding with a verification. Demurrer. *Semble*, that the replication was bad, for not traversing defendant's entry for the purpose of distraining, and concluding to the country, instead of raising an immaterial issue on the intention of the defendant in entering. *Semble*, also, that the plea need not aver notice of the distress, with the cause of the taking, to have been given according to 2 W. & M., sess. 1, c. 5, s. 1, and that the plea, having perfectly answered the seizure, was not rendered bad in substance by going on unnecessarily to answer matters of mere aggravation laid in the declaration, viz., the conversion of plaintiff's goods.

*Held*, that the plea should have shown that the house, or that part of it of which the doors were locked, was the most fit and convenient place for securing the distress, or the tenant might be improperly kept out of possession. *Woods v. Durrant*, 16 M. & W. 149.

Case cited in the judgment: *Washbourne v. Black*, at N. P., Ld. Mansfield, in 1774, cited 11 East, 405.

And see *De Injuriâ*.

#### TROVER.

*Former recovery for conversion against third party*.—Declaration in trover for a bedstead. Plea, that before the commencement of the suit, the plaintiff recovered judgment in trover against *W.* for converting the same bedstead, and received from *W.* the amount of damages and costs in that action, which said damages were the full value of the bedstead; that the said conversion by *W.* was a conversion not later than the conversion in the declaration mentioned; and that before the conversion in the declaration mentioned, *W.* sold the bedstead to the defendant; and that the taking under such sale was the conversion alleged in the present action: *Held*, on special demurrer, that the plea was good. *Casper v. Shepherd*, 4 D. & L. 218.

Cases cited in the judgment: *Adams v. Brough-ton*, 2 Strange, 1878; *Bird v. Randall*, 3 Burr.

1345; *Comyns v. Boyer*, 2 Cro. Elm. 485; *Leyfield's case*, 10 Rep. 88, b.; *Unwin v. St. Quintin*, 11 M. & W. 277.

#### UNCERTAINTY.

*Argumentativeness*.—To assumpsit by drawer against acceptor of a bill of exchange, with counts for money lent, &c., the defendant pleaded,—1st, that he was employed by G. & Co. to engrave a certain print for the sum of 1,200*l.*, and that G. & Co. had agreed to pay him on account of the said engraving 40*l.* a month; and thereupon, in consideration that the defendant, with the assent of G. & Co., and at the request of the plaintiff, would suffer and permit the plaintiff to receive from G. & Co. so much of the said instalments as should amount to the sum of money in the bill specified, the plaintiff agreed to take payment of the bill out of such instalments, and to discharge the defendant from the performance of the promise. The plea then averred that the plaintiff, in pursuance of the agreement, received of G. & Co. 40*l.*, being the first instalment; and although another instalment was due, and the same was sufficient to satisfy the residue of the bill, the plaintiff, of his own wrong, omitted to obtain and procure it from G. & Co. Replication, that in consideration that the defendant, with the assent of G. & Co., at the request of the plaintiff, would suffer and permit the plaintiff to receive from G. & Co. so much of the said instalments as should amount to the sum of money in the bill specified, the plaintiff did not agree to take payment of the bill out of such instalments, and to discharge the defendant from the performance of the promise: *Held*, on special demurrer, that the replication was bad, inasmuch as it was uncertain whether the plaintiff meant to put in issue the consideration or the agreement, or both. *Held*, also, that the plea was bad, for not showing such an agreement between the three parties as would give the plaintiff a right of action against G. & Co.

The defendant also pleaded to the money counts, as to 50*l.*, parcel, &c., that before any breach of the promise in those counts mentioned, the plaintiff made a bill of exchange for the payment of 50*l.* four months after date, and that defendant accepted the bill and delivered the same to the plaintiff, who then accepted the same in discharge of the sum of 50*l.*, parcel, &c., and then indorsed and delivered the same to *S.*, who from thence hitherto hath been, and still is, the holder of the bill, and entitled to sue thereon. Replication, that defendant did not pay the bill, and that Sharp returned it to the plaintiff, who thereby then became and was the holder thereof, and so remained and continued, until and at the time of the commencement of this suit, and still is the holder thereof. *Verification*.

There was a similar plea alleging payment to *S.* while he was the holder of the bill; to which the plaintiff replied, denying the payment, and alleging that *S.* returned the bill as in the last plea.

*Held*, on special demurrer, that the two last



replications were argumentative denials of the allegation in the pleas that S. was the holder of the bill, and that the replications should have concluded with an *absque hoc* that S. was the holder of the bill. *Kemp v. Watt*, 4 D. & L. 21.

#### USE AND OCCUPATION.

**Eviction.**—*Plea amounting to general issue.*—To a declaration in debt by S. for use and occupation of a messuage, defendant pleaded,—That the sum demanded became due from him to plaintiff for such use and occupation for the space of one year; that the Brewers' Company had demised the messuage and certain land to J., by indenture, for 71 years, with a proviso (in the usual form) for re-entry, if J. or his assigns should erect any building on the land, exceeding seven feet in height; that from thence to year to year, &c., at a rent payable quarterly; that defendant entered and occupied the premises as tenant to plaintiff during the year first mentioned; that, after the making of the indenture, and before the term vested in plaintiff, J. erected a building on the land contrary to his covenant, and without the company's consent, and that plaintiff continued the same so erected, without the consent of the company or defendant, until the re-entry after-mentioned: And that afterwards, and after the expiration of the said year, and *after the accruing of the causes of action*, and while the company were reversioners, and before action brought, the company, under the said proviso, did, for the causes aforesaid, and for the purpose of determining the said term of 71 years from the commencement of the said space of one year, re-enter and eject plaintiff, and defendant as his tenant; and that the company, after the expiration of the said space of one year, and after the accruing of the said causes of action, and before this action brought, *did elect to determine, and did determine*, the term of 71 years from the time of the commencement of the said one year, for the said breaches of covenant, so continuing at and after the commencement of the said one year. On special demurrer, *Held*, that the plea was bad; for,

1. No authority appeared by which the company could or did determine the term of 71 years from any period, except that of actual re-entry. But,

2. If the plea showed that the term had ceased before the rent accrued, it amounted to the general issue.

3. If it showed only a determination of the term after the rent accrued, it was no answer to the action. *Selby v. Browne*, 7 Q. B. 620.

#### WASTE.

**Damage to reversion.**—To an action on the case for prostrating part, and building on one part, of a wall, and laying materials on a close, in which wall and close plaintiff was interested as reversioner, defendant pleaded that his own dwelling-house, which he was repairing, accidentally and without his default, fell upon the wall and threw it down, and that afterwards,

and before action brought, and within a reasonable time, defendant carefully, and at his own expense, erected and built the said wall upon the said close, and, in and about such erecting and building, necessarily and unavoidably committed the grievances, &c., doing no unnecessary damage, &c.; and thereupon and then, to wit, at the times when, &c., at his own expense, repaired all damages sustained by plaintiff by reason of the grievances, &c.

*Held*, on demurrer, no answer to the action. *Taylor v. Stendall*, 7 Q. B. 634.

#### WARRANT OF ATTORNEY.

**Averting appearance.**—*Nullity and irregularity.*—*Waiver.*—*E.* gave a warrant of attorney authorising the attorney to appear for him, receive a declaration in debt, and thereupon confess the action, or suffer judgment by *nil dicit* or otherwise. Judgment was signed, and execution issued, without any appearance being entered for defendant.

*Semble*, per Lord Denman, C. J., that no appearance was necessary. But, *held*, that the omission was, at most, an irregularity, and might be waived by laches. And that it was so waived, when the warrant was executed on 5th February, and *E.* was told at the time that judgment would be entered up forthwith, and judgment was entered up on 6th Feb., seizure made under a *fi. fa.* on 24th April, and the goods sold on 2nd May, and the rule to set aside was obtained on 26th May.

Though a docket was struck against *E.* on 3rd May, a fiat issued on 5th May, and assignees were chosen on 22nd May, on whose behalf the rule to set aside was obtained. *Charlesworth v. Ellis*, 7 Q. B. 678.

Cases cited in the judgment: *Bircham v. Tucker*, 8 Scott, 469; *Kemp v. Matthews*, *ib.* 399.

#### WHARFINGER.

**Injury to vessel.**—Declaration in case stated, that the defendant was possessed of a wharf for the loading and unloading of vessels, on the banks of the Thames, near which there was certain woodwork, before then placed by the defendant, and then being upon the bottom of the river, over which at certain states of the tide the vessel of the plaintiff, thereafter mentioned, would float, but, at others, not; that while the defendant was so possessed of the wharf, the plaintiff was possessed of a vessel then being, by the sufferance and permission of defendant, at and alongside the said wharf, for reward to the defendant in that behalf; and the defendant then had the management and control of the said wharf, and the mooring and stationing of vessels at and near the same, while they were at the said wharf, for the purpose of using the same. Breach, that the defendant unskilfully and negligently placed, moored, and stationed the plaintiff's vessel in the part of the river near the said wharf and over the said woodwork, and unskilfully and negligently detained the vessel there for a long time, until, on the natural fall of the tide, she fell and lodged against the

woodwork, and was damaged thereby: *Held*, on motion in arrest of judgment, that this count sufficiently stated a duty in the defendant safely to moor and station the plaintiff's vessel, and a breach of that duty. *Wood v. Curling*, 15 M. & W. 626.

[It will occasionally be observed, that the marginal abstracts of two reporters of the same case are stated, varying in some respect. This partial repetition is deemed advisable, in order that our readers may have before them both versions of the point decided.]

## CHANCERY SITTINGS.

AT WESTMINSTER.

Lord Chancellor.

Michaelmas Term, 1847.

Tuesday	Nov. 2	{ Appeal Motions and Appeals.
Wednesday	3	(Petition-day) Petitions.
Thursday	4	{ Appeals.
Friday	5	
Saturday	6	
Monday	8	
Tuesday	9	
Wednesday	10	{ Appeal Motions and Ditto.
Thursday	11	
Friday	12	
Saturday	13	
Monday	15	
Tuesday	16	{ Appeals.
Wednesday	17	
Thursday	18	
Friday	19	
Saturday	20	
Monday	22	{ Appeals.
Tuesday	23	
Wednesday	24	
Thursday	25	
Friday	26	

N. B.—Such days as his Lordship is occupied in the House of Lords excepted.

Master of the Rolls.

In Michaelmas Term, 1847.

AT WESTMINSTER.

Tuesday	Nov. 2	Motions.
Wednesday	3	{ Petitions in the General Paper.
Thursday	4	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Friday	5	
Saturday	6	
Monday	8	
Tuesday	9	
Wednesday	10	{ Motions.
Thursday	11	
Friday	12	
Saturday	13	
Monday	15	
Tuesday	16	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Wednesday	17	
Thursday	18	
Friday	19	
Saturday	20	
Monday	22	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Tuesday	23	
Wednesday	24	
Thursday	25	
Friday	26	

Thursday	18	Motions.
Friday	19	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday	20	
Monday	22	
Tuesday	23	
Wednesday	24	
Thursday	25	Motions.

Petitions in the General Paper.

Thursday . . . 25 Motions.

Short Causes, Consent Causes, and Consent Petitions every Saturday at the sitting of the court.

NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

Vice-Chancellor of England.

Tuesday	Nov. 2	Motions.
Wednesday	3	(Petition-day) Petitions.
Thursday	4	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday	5	Short Causes and Ditto.
Saturday	6	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday	8	
Tuesday	9	
Wednesday	10	
Thursday	11	
Friday	12	{ Motions.
Saturday	13	(Petition-day) Petitions, (unopposed first,) Short Causes, and Causes.
Monday	15	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	16	
Wednesday	17	
Thursday	18	
Friday	19	
Saturday	20	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday	22	
Tuesday	23	
Wednesday	24	
Thursday	25	
Friday	26	{ Motions.
Saturday	27	(Petition-day) Petitions, (unopposed first,) Short Causes, and Causes.
Monday	29	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	30	
Wednesday	31	
Thursday	1	
Friday	2	

Vice-Chancellor Knight Bruce.

Tuesday	Nov. 2	Motions.
Wednesday	3	(Petition-day) Petitions.
Thursday	4	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday	5	
Saturday	6	
Monday	8	
Tuesday	9	
Wednesday	10	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Thursday	11	
Friday	12	
Saturday	13	
Monday	15	
Tuesday	16	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday	17	
Thursday	18	
Friday	19	
Saturday	20	
Monday	22	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	23	
Wednesday	24	
Thursday	25	
Friday	26	

Wednesday . . . 24 Short Causes and Ditto.  
Thursday . . . 25 Motions.

**Vice-Chancellor's Sittings.**

Tuesday . . Nov. 2 Motions and Causes.  
Wednesday . . . 3 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.  
Thursday . . . 4 }  
Friday . . . 5 }  
Saturday . . . 6 } Short Causes, Petitions, (unopposed first,) and Causes.  
Monday . . . 8 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.  
Tuesday . . . 9 }  
Wednesday . . 10 }  
Thursday . . . 11 Motions and ditto.  
Friday . . . 12 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.  
Saturday . . . 13 } Short Causes, Petitions, (unopposed first,) and Causes.  
Monday . . . 15 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.  
Tuesday . . . 16 }  
Wednesday . . 17 }  
Thursday . . . 18 Motions and ditto.  
Friday . . . 19 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.  
Saturday . . . 20 } Short Causes, Petitions, (unopposed first,) and Causes.  
Monday . . . 22 } Pleas, Demurrers, Exceptions, Causes, and Further Directions.  
Tuesday . . . 23 }  
Wednesday . . . 24 Short Causes and Ditto.  
Thursday . . . 25 Motions and Causes.

**COMMON LAW SITTINGS.**

**Queen's Bench.**

*In and after Michaelmas Term, 1847.*

**MIDDLESEX.**

*In Term.*

1st Sitting, Wednesday . . . . . Nov. 3  
And two following days at Eleven o'clock.  
2nd Sitting, Saturday . . . . . Nov. 6  
And subsequent days at Eleven o'clock.  
3rd Sitting, Tuesday . . . . . Nov. 23  
At 4 past Nine o'clock precisely, for Undeferred Causes only.

A list of such remanets as appear fit to be tried in Term will be printed immediately, but on the statement of either side that a cause is too long to be tried in Term, it will be withdrawn from such list, provided the other side have two days' notice of the application at the Marshal's to postpone, and do not oppose the application on good grounds—the usual number of completed and new causes will be put into the list day by day in their usual order.

Sitting after Term, Friday, Nov. 26.

**LONDON.**

*In Term.*

Sitting at 10 o'clock, Wednesday, Nov. 24  
For Undeferred Causes and such as the Judge considers fit to be called.

*After Term*  
Saturday . . . . . Nov. 27  
(No adjourn.)

**Magistrate of Pleas.**

*In Term.*

1st Sitting, Wednesday . . . . . Nov. 3  
2nd Sitting, Wednesday . . . . . 10  
3rd Sitting, Friday . . . . . 19  
*IN LONDON.*  
1st Sitting, Monday . . . . . Nov. 8  
2nd Sitting, Wednesday . . . . . 17

*After Term.*

**IN MIDDLESEX.**

**IN LONDON.**

Friday . . . Nov. 26 | Saturday . . Nov. 27  
(To adjourn only.)

The Court will sit in Middlesex, at Nisi Prius in Term, by adjournment, from day to day, until the causes entered for the respective Middlesex sittings are disposed of.

The Court will sit, during and after Term, at ten o'clock.

**ANNUAL REGISTRATION OF ATTORNEYS.**

6 & 7 VICT. c. 73, s. 23.

For the purpose of obtaining the Registrars' Certificate, it is necessary that a declaration in writing should be delivered to the registrar, containing the name and place of residence of each attorney or solicitor, and the court or one of the courts of which he is admitted, with the term and year of admission.

The declaration is to be signed by the attorney or his partner, or by the London agent of such as reside more than 20 miles from London.

The London agents are to accompany their declarations, with a list thereof arranged in alphabetical order, and written on foolscap paper, book-wise.

It is particularly requested that the declarations (the forms of which may be obtained at the Law Society) be sent to the office on as early a day as possible.

**THE EDITOR'S LETTER BOX.**

THE next and following numbers will be enlarged, in order to comprise the remaining Digest, Statutes, Lists, and other articles which it is desirable to include in the present volume. The last number will contain the Table of Cases reported and digested, with a General Index to this, the 34th volume. The new volume will be improved in its scope and extent, as already notified to our readers.

The *Legal Almanac* will include all the important Law Statutes. It will be a complete "Year-Book" for the practitioner. The *Diary* will also be much enlarged and improved in form.

"A Subscriber of Sixteen Years" is referred to Mr. Hayes' work on Conveyancing and the Real Property Statutes.

The case mentioned by a Subscriber shall be immediately inquired into.

Some further letters on the Jurisdiction in Bankruptcy of the County Courts have been received.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, OCTOBER 23, 1847.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

### ALTERATIONS IN THE JURISDICTION OF THE BANKRUPT AND INSOLVENT COMMISSIONERS, UNDER THE 10 & 11 VICT. c. 102.

EXTENSIVE preparations are being made with a view of giving effect to the changes produced by the Bankruptcy and Insolvency Act of last session, (10 & 11 Vict. c. 102). The house formerly occupied by the late Baron Gurney, at the south side of Lincoln's Inn Fields, adjoining the building attached to the Court for the Relief of Insolvent Debtors, has been purchased, and is to be converted into three additional courts, so as to enable the four Insolvent Commissioners to sit separately and contemporaneously. The supposed necessity for these alterations arises out of the expected influx of insolvent petitioners, under the statutes 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, the jurisdiction under which was heretofore exclusively vested in the Commissioners of Bankruptcy in town and country. We shall be much surprised, if the increase of business in the Insolvent Court occasioned by the late act is in any degree commensurate with the extent of the preparation made for the accommodation of the new class of suitors, who,—to distinguish them from the insolvents petitioning under the stat. 1 & 2 Vict. c. 110, and with reference to the title of the order under which they obtain their discharge from custody,—are called *Protectionists*.

It is quite true, that when the acts above alluded to first came into operation, the prospect of obtaining relief as an insolvent without being compelled to enter

within the walls of a prison, and the opportunity—so convenient to persons already in custody—of getting discharged without notice to their creditors, or any form of inquiry, induced great numbers of embarrassed persons to avail themselves of the facilities afforded by the law. The regulations subsequently made by the Bankrupt Commissioners, and the limited effect given by the decisions of the courts of law to a final order granted under the 7 & 8 Vict. c. 96, render the advantages derived by insolvents under the new system somewhat equivocal, and have impressed this sharp-sighted class of persons with more accurate ideas, as to the value of the protection obtained under it, than they entertained two or three years ago.

The case of *Toomer v. Gingell*, in the Common Pleas,<sup>a</sup> expressly decided, that the final order granted under the stat. 7 & 8 Vict. c. 96, merely operates as a protection to the person from arrest in respect of the debts mentioned in the schedule, and cannot be pleaded in bar to an action by a creditor, or used to defeat an execution against the after-acquired goods of the debtor. On the other hand, a discharge under the stat. 1 & 2 Vict. c. 110, is pleadable in answer to an action for a debt inserted in the insolvent's schedule,<sup>b</sup> and his after-acquired property is not at the mercy of his individual creditors, and can only be taken by his assignees under an express order from the court, which is never granted but upon an equitable considera-

<sup>a</sup> Reported 15 Law J., p. 255, C. P.

<sup>b</sup> See 1 & 2 Vict. c. 110, sect. 91, and for the form of plea, see 3 Chit. Plead. p. 82, 7th ed.

With respect to bail in country cases under the 1 & 2 Vict. c. 110, the difficulties anticipated from the passing of the 10 & 11 Vict. c. 102, and adverted to in a former number, *ante*, p. 431, have been more than justified by the result, and we understand great doubt and uncertainty still prevails on the subject, but that the Insolvent Commissioners have, for the present, come to the conclusion, that all motions respecting bail in country cases, as well as the proceeding analogous to the justification of bail, is to take place, as heretofore, in London, without reference to the locality in which the insolvent's case is to be heard and disposed of.

The transfer of jurisdiction under the Act "for better securing the Payment of Small Debts," (8 & 9 Vict. c. 127,) from the Court of Bankruptcy to the Insolvent Court, and the County Courts, which it may be remembered was an after-thought, tacked on to the stat. 10 & 11 Vict. during its progress through parliament, has given rise to unforeseen inconveniences in addition to the difficulties which were predicted. Orders were made by the Bankrupt Commissioners, under the 8 & 9 Vict. c. 127, in numerous cases prior to the 15th September last, for payment of judgment debts under 20*l*. by instalments of various amounts, in some instances payable at distant periods. The 6th section of the 10 & 11 Vict. c. 102, provides, that from the time that act shall commence and take effect, the Commissioners of the Court for the Relief of Insolvent Debtors, and the Judges of the County Courts, shall have jurisdiction in "all matters of debt," under the 8 & 9 Vict., c. 127, without reserving to the Bankrupt Commissioners the authority to proceed further with those cases in which they had made orders for payment before the new act came into operation. The consequence is, that where orders have been made for payment previous to

the 15th September, and the debtors refuse to comply, or discontinue the payment of instalments in satisfaction of the judgments against them, the Bankrupt Commissioners are left without the power to enforce their own orders by warrant of commitment or otherwise; whilst the new act contains no machinery which enables the Commissioners of the Insolvent Court, or the Judges of the County Courts, to take up and continue the proceedings commenced in the Court of Bankruptcy. In such cases, the creditor must commence his proceedings *de novo*, under the Small Debts Act, before the Insolvent Commissioners, or the County Court Judges, according as the defendant shall have resided for six calendar months preceding the time of suing out the summons in one district or the other; without any reference to the abortive proceedings in Bankruptcy, the trouble, expense, and disappointment incidental to which are the results of this blundering piece of legislation. As already observed, a judgment debtor of a migratory disposition, who has not resided for six months immediately preceding the time of suing out a summons under the Small Debts Act, in any particular locality, is, by the act of last session, indulgently relieved altogether from the operation of the act (8 & 9 Vict.) which was announced as intended to operate as a great boon to creditors, and a terror to pertinacious and dishonest debtors.

The act 1 & 2 W. 4, c. 56, s. 10, provides, that all attorneys and solicitors of any of the Superior Courts may be admitted and inrolled in the Court of Bankruptcy without any fee, and may appear and plead in any proceedings in the said court *without being required to employ counsel*, except in proceedings before the Court of Review, and upon the trial of issues by jury, &c. Since the passing of the statutes conferring jurisdiction on the Court of Bankruptcy in matters of insolvency, the insolvent business has been transacted chiefly by solicitors without the assistance of counsel. In the Court for the Relief of Insolvent Debtors, however, the bar have exclusive audience, and it appears that no distinction is contemplated with respect to those cases in which the jurisdiction is now transferred to that court, as it appears from a notice published by the Insolvent Commissioners, that the creditors of petitioners for protection are informed, that they may appear in person or by counsel.

they may oppose "either in person or by counsel," implicitly excluding attorneys. This arrangement may not in a pecuniary view be disadvantageous to either branch of the profession, inasmuch as a counsel, according to the etiquette of that branch of the profession, can only accept a brief to oppose an insolvent through the instrumentality of an attorney, and the charge to which the latter will be entitled for drawing the brief may be equivalent to what he could claim for acting as an advocate. If this were a matter of indifference to the profession, (which is by no means clear) we are not certain that the alteration will be satisfactory to creditors, who will now find, if they are not disposed to oppose in person, they must abandon opposition, or else retain the services both of a counsel and attorney. Whether this and other results, daily disclosing themselves in its operation were contemplated by the framers of the stat. 10 & 11 Vict. c. 102, we shall not venture to suggest.

Any notice of the practical alterations produced by the act of last session would be incomplete, if we omitted to state, that the Lord Chancellor has already exercised the authority conferred on him by the 2nd section of the statute, and appointed Vice-Chancellor Wigram as the judge in matters of Bankruptcy, instead of Vice-Chancellor Knight Bruce. We have not learned whether this arrangement is intended to be of a permanent, or only of a temporary character; but as some leading members of the Chancery bar, elected to practise in Vice-Chancellor Knight Bruce's Court, with a view to the Bankruptcy jurisdiction exercised by that learned judge, it can scarcely be supposed that the transfer of that branch of business, from the one court to the other, can fail to produce some inconvenience, the extent of which will be better ascertained when the Term commences.

## RECENT ALTERATIONS IN THE CRIMINAL LAW.

### THREATENING LETTERS, AND CUSTODY OF OFFENDERS, ACTS.

THE provisions of the Act for "the more speedy Trial and Punishment of Juvenile Offenders" were commented upon in a former number, (*ante*, p. 538.) The other statutes of the last session, by which alterations have been effected in the criminal law, are, as already stated, 1st, the Act extending the provisions of the Law re-

Parties with a view to Extort Money; and 2ndly, the Act to amend the Law as to the Custody of offenders.\* The former of these statutes, after reciting that it is expedient to extend the provisions of so much of the 7 & 8 Geo. 4, c. 29, and of the 9 Geo. 4, c. 55, as extends to threatening letters, and so much of the 7 W. 4, and 1 Vict. c. 87, as relates to the offence of accusing persons of unnatural crimes, proceeds to enact, that if any person shall knowingly send, deliver, or utter to any other person, any letter or writing, accusing or threatening the person to whom the letter is sent or delivered, or any other person, of any crime punishable by law with death or transportation, assault with intent to commit a rape, attempt to commit a rape or any infamous crime, with a view to extort or gain, by means of such threatening letter or writing, any property, money, or other valuable thing; or any letter threatening, to kill, or to harm or destroy any building, or agricultural produce; or shall procure, aid, counsel, or abet the commission of any such offence; every such offender shall be guilty of felony, and liable, upon conviction, to be transported for any period not less than seven years, imprisoned, with or without hard labour, for any term not exceeding 14 years, and, if a male, once, twice, or thrice, publicly or privately whipped, (at the discretion of the court,) in addition to such imprisonment.

By this provision, uttering a threatening letter, as well as sending or delivering it, is made an offence, we believe for the first time, and it is no longer necessary that the intention should be to extort money from the person threatened or accused. The offence is complete under this act, if there be evidence of an intent "by means of such threatening letter or writing," to extort anything of value from any person whatever. The law was previously considered to be inadequate, to meet the case of a letter sent to one person threatening to accuse another, where the intention was to extort money, not from the party threatened to be accused, but from the person to whom the letter was sent. More than one instance has lately occurred, where attempts have been made, by means of threatening letters, to work on the feelings and affections of relatives of the parties threatened to be accused, and if the

new act proves effectual by insuring the punishment of persons guilty of such offences, it will afford an additional protection to society in a matter in which every protection the law can afford is most desirable.

The portion of the first section which relates to any letter or writing threatening to kill or murder, or to burn or destroy, as therein mentioned, is a re-enactment of the 4 Geo. 4, c. 54, s. 8, substituting the words "any other person" for "any of her Majesty's subjects," as in the former enactment, and adding the words "or other building," and also the words "or other agricultural produce," to the description of property threatened to be burnt or destroyed. The introduction of the words "or shall knowingly procure, counsel, aid, or abet the commission of the said offences, or either of them," in the new act, is an extension of great importance, and the application of the punishment of whipping to all male offenders of this description, at the discretion of the court, may not be without benefit. As the insufficiency of imprisonment begins to be felt, the efficacy of whipping, as a punishment for particular crimes, may again be admitted.

The 10 & 11 Vict. c. 66, only contains two clauses. The second merely enacts, that if any person shall accuse, or threaten to accuse, either the person to whom the threat shall be made, or any other person, of any of the crimes before specified, with a view to extort from the person accused, or from any other person whatsoever, money or any valuable thing, the offender shall be guilty of felony, and liable to the same punishment as persons convicted under the preceding section.

The result of this enactment is, to place persons accusing or threatening, by words or signs, in order to extort money, &c., in the same category as offenders, sending, delivering, or uttering, threatening letters. It is obvious that the law which seeks to prevent by punishing offences of this nature, should, if possible, be framed so as to comprehend every variety of the crime which the perverse ingenuity of the offenders may resort to. This short statute affords, on the whole, a favourable specimen of the conciseness with which criminal matters may be treated by legislative enactment, when the palpable absurdity is avoided of varying the definitions of offences not distinguishable in their nature, and apportioning different degrees of punishment to crimes of a similar cha-

acter. It is to be regretted, however, that when the law in respect of these offences was about to be altered, an endeavour was not made, also, to consolidate it, by repealing the enactments in statutes previously in force, and embodying the whole in a single act. The subject matter was not of a nature to render the consolidation of the law a work of any considerable difficulty, and it is impossible not to perceive, that the multiplication of criminal statutes in reference to the same offence is a positive evil, the continued existence of which is a blot on our system of legislation.

The Custody of Offenders Act contains but two enacting clauses also. It appears that, by the 5 Geo. 4, c. 84, her Majesty, by order in council, may direct male offenders convicted in Great Britain, and under sentence of transportation, to be kept to hard labour in any part of her Majesty's dominions out of England. The 1st section of the new act empowers one of her Majesty's principal Secretaries of State to deal with male offenders convicted in Ireland, and under sentence of transportation, precisely in the same manner as if the conviction took place in Great Britain, namely, by ordering that such persons should be confined and kept to hard labour in any place of confinement out of England.

The 2nd section authorises her Majesty, by an order in writing, to direct that any persons under sentence of transportation within Great Britain, shall be removed from the prisons in which they are severally confined to any other of her Majesty's prisons or penitentiaries in Great Britain, for such time as her Majesty may direct, not exceeding the time for which they might have been lawfully confined in the prisons from which they shall have been removed.

This provision is obviously intended to enable the government to carry into effect the new system of secondary punishment, explained by Earl Grey in the House of Lords during the last session of parliament, and which has been noticed in a preceding number.\* 'We are not aware to what extent it is resolved to try the experiment in the first instance, but whatever may be the result, the additional powers conferred on the executive government by the provisions of this statute do not seem open to any reasonable objection. The treatment and discipline of prisoners, and the general regulations of prisons, are well deserving



the attention of the Legislature, but the attention of prisoners, and their removal when expedient or necessary, seem to fall peculiarly within the province of the Secretary of State for the Home Department.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### CARRIAGE OF PASSENGERS BY SEA.

10 & 11 Vict. c. 103.

An Act to amend the Passengers Act, and to make further Provisions for the Carriage of Passengers by Sea. [July 22, 1847.]

1. 5 & 6 Vict. c. 107. *Extent to which the Passengers Act (5 & 6 Vict. c. 107) shall apply.*—Whereas by an act passed in the session of parliament holden in the 5 & 6 Vict. c. 107, intitled “An Act for regulating the Carriage of Passengers in Merchant Vessels,” it is amongst other things provided, that the said act shall not extend to any ship carrying less than 30 passengers, and it is expedient that the said act should be amended in that respect: Be it therefore enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the said recited act shall hereafter extend and the same is hereby extended to the case of every ship carrying any passenger on any such voyage as in the said recited act is mentioned: Provided that when the number of passengers carried in any such ship shall not bear to the registered tonnage thereof a greater proportion than one passenger to every 25 tons, so much and such parts only as are next herein-after specified of the said recited act shall extend and are hereby extended to the case of any such ship; that is to say, such parts thereof as relate to the recovery of money in certain cases by way of return of passage money; or as relate to subsistence money; or as relate to compensation to be made for the loss of passage; or as relate to the giving receipts for money received for or in respect of any passage to North America; or as relate to the receipt of money for or in respect of any such passage by any person as agent, not having a written authority from his principal to act in that capacity; or as relate to the inducing of any person by any fraud or false pretence to engage any such passage; or as relate to any prosecution or other proceeding at law for the recovery of such passage or subsistence money, or of such compensation as aforesaid, or for the infliction of any fines or penalties in respect of any of the matters or things aforesaid: Provided also, that if in any suit, action, prosecution, or other legal proceeding under the said recited act any question shall arise whether any ship proceeding on any voyage did or did not carry a greater number of passengers than aforesaid in proportion to the tonnage thereof, the burden of proving

that the number of passengers so carried in proportion to the tonnage of the ship did not exceed that proportion shall lie upon the person in such suit, action, or other proceeding: And be it enacted, That if it shall be brought, and failing such proof it shall for any such purpose as aforesaid be taken and adjudged that the number of passengers so carried did exceed that proportion.

2. *Colonial land and emigration commissioners may in certain cases substitute other articles of food for that mentioned in recited act.*—And whereas it may from time to time be necessary that for the articles of food mentioned in the said recited act, or for some of them, other equivalent articles should be substituted; be it enacted, That it shall be lawful for her Majesty’s Colonial Land and Emigration Commissioners for the time being, acting under the authority of one of her Majesty’s principal Secretaries of State, from time to time, by any notice or notices for that purpose, issued under the hands of any two of such commissioners, and published in the “London Gazette,” to substitute for any of the articles of food mentioned in the said recited act any other article or articles of food, as to the said commissioners shall seem meet, and any such notice or notices from time to time to alter, amend, or revoke as occasion may require: Provided always, that all the clauses and provisions of the said recited act contained respecting the articles of food therein mentioned shall extend and are hereby extended to the case of such substituted articles.

3. *All articles of food required by recited act to be furnished at the expense of the owners or charterers, and to be of good quality.*—And be it enacted, That all articles of food required by the said recited act, or by any such notice or notices as aforesaid, to be laden on board any ship carrying passengers, shall before such ship shall be cleared out be furnished and laden on board by and at the expense of the owner or charterer of such ship, for the purposes in the said recited act provided, and shall be of a quality to be approved of by the emigration officer at the port of clearance, or his assistant, or, where there is no such officer, or in his absence, by the officer of customs from whom a clearance shall be demanded; and that in case of any default herein the owner, charterer, or master of such ship, shall be liable to the payment of a penalty not exceeding 50*l*.

4. *Regulation with respect to the carriage of gunpowder, &c.*—And be it enacted, That in any ship carrying on any such voyage as in the said recited act is mentioned a greater number of passengers than in the proportion of one passenger to every 25 tons of the registered tonnage of such ship, it shall not be lawful to put on board or carry as cargo any gunpowder, vitriol, or green hides, and that no such ship having on board as cargo any such articles as aforesaid shall be allowed to clear out or proceed on her voyage.

5. *Regulations for ensuring proper light and ventilation.*—And be it enacted, That for the

purpose of ensuring a proper supply of light and air in every ship carrying on any such voyage as in the said recited act mentioned a greater number of passengers than in the proportion of one passenger to every 25 tons of the registered tonnage of such ship, the passengers shall, at all times during the voyage, (weather permitting,) have free access to and from the between decks by each hatchway situate over the space appropriated to the use of such passengers: Provided always, that if the main hatchway be not one of the hatchways appropriated to the use of the passengers, or if the natural supply of light and air through the same be in any manner unduly impeded, it shall be lawful for the emigration officer at the port of clearance, or his assistant, or, where there is no such officer, or in his absence, to the chief officer of customs at the port from which a clearance shall be demanded, to direct such other provision to be made for affording light and air to the between decks as the circumstances of the case may, in the judgment of such officer, appear to require, which directions shall be duly carried out to his satisfaction; and in case of any default herein, the master of the said ship shall be liable to the payment of a penalty not exceeding 50*l.* sterling.

6. *Officer from whom a clearance is demanded to require ship to be surveyed, at the expense of the owner.—If ship reported not seaworthy, the same not to be cleared until rendered so.*—And be it enacted, That the emigration officer at the port of clearance, or his assistant, or, where there is no such officer, or in his absence, the officer of customs from whom a clearance shall be demanded, shall in all cases require any ship fitted or about to carry passengers on any such voyage as in the said recited act is mentioned to be surveyed, at the expense of the owner or charterer thereof, by two or more competent surveyors, to be duly authorized and approved of, either by the Commissioners of Colonial Lands and Emigration, or by the Commissioners of Customs, as the case may be; and if it shall be reported by such surveyors that they have surveyed such ship, and that such ship is not in their opinion seaworthy, so as to be fit in all respects for her intended voyage, such ship shall not be cleared out until the same, or two other surveyors appointed as aforesaid, shall report that such ship has been rendered seaworthy, and in all respects fit for her intended voyage: Provided always, that the precautions for ascertaining the seaworthiness of ships, and their state of repair and efficiency for their intended voyages respectively, shall in all respects, and without distinction, be the same for foreign as for British ships.

7. *Ship not to be cleared out until reported to be properly manned.*—And be it enacted, That unless it shall be proved to the satisfaction of the emigration officer at the port of clearance, or his assistant, or, where there is no such officer, or in his absence, the officer of customs from whom a clearance shall be demanded,

that such ship as aforesaid is manned with a full complement of men, such ship shall not be cleared out.

8. *No ship to be cleared until a certificate is obtained, that all the requirements of the law have been complied with.*—And be it enacted, That no ship carrying on any such voyage as in the said recited act is mentioned, a greater number of passengers than in the proportion of one passenger to every 25 tons of the registered tonnage of such ship shall be allowed to clear out or proceed on her voyage until the master thereof shall have obtained from the emigration officer at the port of clearance, or his assistant, or, where there is no such officer, or in his absence, from the officer of customs from whom a clearance shall be demanded, a certificate under his hand that all the requirements, as well of this act as of the said recited act, so far as the same can be complied with before the departure of such ship, have been duly complied with.

9. *Ships putting into any port in the United Kingdom after sailing to replenish provisions, &c.*—And be it enacted, That if any ship carrying on any such voyage as in the said recited act is mentioned, a greater number of passengers than in the proportion of one passenger to every 25 tons of the registered tonnage of such ship shall put to sea, and shall afterwards put into or touch at any port or place in the United Kingdom, it shall not be lawful for such ship to leave such port or place until there shall have been laden on board, as herein-before is mentioned, such further supply of pure water, wholesome provisions of the requisite kinds and qualities, and medical stores, as may be necessary to make up the full quantities of those articles required by the herein-before recited act or this act for the use of the passengers during the whole of the intended voyage, nor until the master of the said ship shall have obtained from the emigration officer, or his assistant, or where there is no such officer, or in his absence, from the officer of customs, as the case may be, at such port or place, a certificate to the same effect as the certificate herein-before required to enable the ship to be cleared out; and in case of any default herein, the master of the said ship shall be liable to the payment of a penalty not exceeding 100*l.* sterling.

10. *In case ship is wrecked, &c., or prevented from landing her passengers in a reasonable time, they shall be provided with a passage by some other vessel; and in default, passengers, &c. may recover expenses by summary process.*—And be it enacted, That in case any ship carrying passengers on any such voyage as in the said recited act is mentioned shall be wrecked or otherwise destroyed, and shall thereby, or by any other cause whatsoever be prevented from landing her passengers at the place they may have respectively contracted to land, or in case such ship shall put into any port or place in a damaged state, and shall not within a reasonable time be ready to proceed with her passengers on her intended voyage, after

having been first efficiently repaired, and in all respects put into a sound and seaworthy condition, then and in any of such cases, such passengers respectively shall be provided with a passage by some other equally eligible vessel to the port or place at which they respectively may have originally contracted to land; and in default thereof within a reasonable time, such passengers respectively, or any emigration officer on their behalf, shall be entitled to recover, by summary process before any two or more justices of the peace, in like manner as in the said recited act is provided in the cases of monies thereby made recoverable, all monies which shall have been paid by or on account of such passengers, or any of them, for such passage, from the party to whom the same may have been paid, or from the owner, charterer, or master of such ship, and also such further sum, not exceeding 5*l.* in respect of each such passage, as shall in the opinion of the justices who shall adjudicate on the complaint be a reasonable compensation for any loss or inconvenience occasioned to any such passenger, or his or her family, by reason of the loss of such passage.

11. *How children are to be computed in reckoning the proportion of passengers to tonnage. Penalty for excess of numbers in proportion to tonnage.*—And in order to remove doubts which have arisen in the construction of the said recited act, be it enacted, That for the purpose of determining the number of persons which according to the said act can be carried in any ship in proportion to the registered tonnage thereof, two children under the age of 14 years shall be computed as one person, and that children under the age of one year shall not be included in such computation: Provided always, that if any ship shall carry upon any such voyage as in the said recited act is mentioned a greater number of persons, computed as aforesaid, in proportion to the registered tonnage thereof, than in the proportion in the said recited act mentioned, the master of such ship shall, for and in respect of every person constituting such excess, be liable to the payment of a penalty not exceeding 5*l.* sterling.

12. *Recovery of penalties.*—And be it enacted, That all penalties imposed by this act shall be sued for and recovered by such persons only and in such and the same manner as in the said recited act is provided in the case of the penalties thereby imposed.

13. *Penalty on person inducing another to part with acknowledgment for passage money.*—And whereas in many cases persons having received under the requirements of the said recited act contract tickets or written acknowledgments for monies in respect of passengers to North America have afterwards been induced to part with the same, whereby they have been deprived of the means of enforcing their rights under such contract tickets; be it enacted, That any owner, charterer, or master of a ship, or any passage broker or other person, who shall induce any person to part with, render useless, or destroy any such contract ticket or

acknowledgment for passage money as aforesaid during the continuance of the contract which it is intended to be evidence, shall be liable in each case to a penalty not exceeding 5*l.*

14. *Government emigration agents to be henceforth styled "Emigration Officers."*—And be it enacted, That the officers known as Government Emigration Agents may henceforth be styled "Emigration Officers;" and that all powers, functions, and privileges vested in such Government Emigration Agents by the said recited act or by any other act shall vest in and be exercised by the "Emigration Officers" for the time being, in like manner as if they bore the designation of Government Emigration Agent.

15. *Definition of terms used in this act.*—And be it enacted, That whenever the term "passenger" or "passage" is used in this act it shall be held not to include or extend to the class of passengers or passages commonly known and understood by the name of "cabin passengers" and "cabin passages;" and that the term "ship" shall include and mean every description of vessel, whether British or foreign, carrying passengers upon any voyage to which the provisions of the said herein-before recited Passengers Act or this act shall for the time being extend.

16. *Act may be amended, &c.*—And be it enacted, that this act may be amended or repealed during the present session of parliament.

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

ONE of our contemporaries finds it convenient to assume that we are inconsistent in supporting the Metropolitan and Provincial Law Association, because five years ago we condemned "The Legal Protective Association" as a needless attempt to raise up—in addition to the Incorporated Law Society—another and a rival association in London, and which New Society afterwards sought to enrol some country solicitors, and adopted a loftier name. Will our contemporary accept our assurance that the new Association of Metropolitan and Provincial Solicitors, as regards its objects and its *modus operandi*, is essentially different from "The Legal Protective," which had the advantage of his patronage.

Profoundly impressed with the importance of a cordial union of both town and country solicitors, we have frequently pointed out that its attainment was the first object of the new association. Endeavouring humbly—we hope not uselessly—to effect this consummation, it is scarcely necessary to add, that no word or line has ever appeared in this publication exalting one class at the expense of the

other, or suggesting, to either that the other was opposed to its interest, or regardless of its welfare. To our poor judgment it seems manifest that the true and lasting interests of the whole profession consist in acting *unitedly*;—in adjusting or waving any inferior points of difference, and cordially co-operating together in the promotion of their common objects.

This view does not find favour in "The Law Times." A writer of editorial paragraphs in that journal asserts (we are sure without any foundation) that the London solicitors selfishly pursue their own interests, and disregard their brethren in the country. He states,

"That the attorneys in London are wont to consider the country attorneys generally as an inferior class," and then he says—"the best of the country attorneys are far superior to the London attorneys in legal and general knowledge, in reputation and social position."

Again, he observes—"Little sympathy can be hoped for here, [in London,] where the interests and feelings are so different. But let the profession in the country take up the cudgel on their own behalf, and they will, as usual, find most aid when they are best prepared to help themselves."

Such are the statements and exhortations addressed to our brethren in the country, for the purpose of promoting their friendly union and co-operation with those in town! A notable specimen truly of the discretion and wisdom of a writer, (surely not the learned editor?) who calls us to account for some fancied inconsistency between our past and present views. But on what foundation of probability or truth does this injudicious and ill-timed attack on the London solicitors rest? Of the three thousand London solicitors, there are no less than eight hundred firms (probably 1,200 individuals) engaged more or less as London agents for the country solicitors; and can any one not utterly ignorant of the true state of the profession, suppose there can be, on the part of the London solicitors, any want of respect or sympathy towards their own clients?

Our contemporary has constantly disparaged and censured the Incorporated Society, alike for what it has done and left undone. He now includes in the same category the members of the Incorporated Law Society and the general body of the London solicitors. Perhaps, rightly so. For the Law Institution comprehends nearly half the London practitioners, and, in reference to the firms to which they belong,

a majority of the body. An attack on the London members of the Incorporated Law Society, as professionally selfish and regardless of their brethren in the country, is, therefore, an attack on the London solicitors in general. In either case, an unmerited and unfounded attack. For ourselves, it is our constant endeavour to maintain the interest of the *whole* profession, whilst our contemporary advocates that of the country solicitors *exclusively*, (but he must pardon us for adding, not well or wisely,) and in opposition to that of the town branch of the profession. He has uniformly sought to *disunite* the two bodies, by endeavouring to persuade the former they were neglected, underrated, and injured by the latter. These mischievous sentiments, under the garb of friendship for the country profession, are again consistently sought to be inculcated.

Acknowledging the courteous terms in which our contemporary has generally referred to this journal, we lament to find him disingenuously asserting that we have admitted that "the London Institution has no regard for the larger branch of the profession—the solicitors in the provinces." The admission is in the imagination of the writer in the Law Times. We hope we may be excused for refusing to admit his inferences or adopt his opinions,—opinions, we are satisfied in this instance, founded on a misapprehension of facts and a very imperfect acquaintance with the circumstances.

It is a fact, which we have often stated, that although the Incorporated Law Society is open to the whole profession, no more than 300 country solicitors out of 7,000 have joined it.\* To talk of this as a "confession" is a sad misapplication of language. The disproportion in the number of town and country members is shown in the annual printed list, and by the distinguishing marks in the Law List: so numerous in one class, and so few comparatively in the other. We could not conceal it were we so disposed. All this, however, is beside the real question. We venture to think that a solicitor resident in London may consider his interest identical with that of his country brethren, and feel that he is

\* It may be mentioned, that though the annual subscription is small, the admission fees are considerable, and solicitors who seldom come to town, however well disposed to the Institution, are not likely to incur the expense of joining it.

advancing the one without losing sight of the other. Has the Incorporated Law Society, in deliberating or acting, in any one instance neglected or overlooked the interests of the whole body, to maintain and uphold the interests of a section? We confidently assert that it *never* has; and entertain no apprehension that any attempt to excite disunion and create distrust on this ground can be successful.

## JURISDICTION OF THE COUNTY COURTS.

### SUMMONING DEBTORS ON UNSATISFIED JUDGMENTS BEFORE THE COUNTY COURTS

*To the Editor of the Legal Observer.*

SIR,—I am obliged to your correspondent at Birmingham; and to S. H. for their information; but I think they have somewhat misunderstood my meaning.

The question asked by me was (though perhaps not made so intelligible as it might have been) “whether a creditor who, previous to the passing of the New County Courts Act, obtained a judgment for a debt not exceeding 20*l.*, can summon the debtor before a judge of the New County Courts under or by virtue of the 1st sect. of the Small Debts Act, 8 & 9 Vict. c. 127,” which enacts, that “a creditor obtaining judgment or order in respect of a debt not exceeding 20*l.* may summon the debtor before a Commissioner of Bankrupts or Court of Requests, or *inferior court of record for the recovery of debts*, or other court for the recovery of small debts.”

Now, it is quite clear that the New County Courts are inferior courts of record, and also courts for the recovery of small debts; but are they such *within the meaning of the said Small Debts Act*, not being in existence at the time of the passing thereof?

“S. H.” was right in applying the question to “a judgment or order obtained from any court of competent jurisdiction in England,” and I agree with him, that the 98th sect. of the New County Courts Act does not give jurisdiction.

TACITUM.

SIR,—Your correspondent G. P. W., who, in your number of the 9th Oct., says, that “Tacitum” has not been correctly answered by me, will probably, on reflection, see that he is in error. The answer I gave, having regard to the time at which the question was propounded, (the strictly logical way of viewing the matter,) G. P. W. admits to be correct; but he alleges that the 4th section of the recent statute (10 & 11 Vict. c. 102,) renders the answer incorrect, if applying to the present time. I do not think so, and I do not acknowledge that the 4th, or any section of the act takes the *sedes* (so to speak) out of the Bankrupt Com-

missioners. The words of that section are that all powers “*in matters of insolvency*” are transferred from the bankruptcy commissioners.

It cannot be successfully contended that, except by express words, or unavoidable inference, the statutable authority of the bankruptcy commissioners could be abrogated. The well-known rules of construction preclude that. Then, is the authority taken away by express words, or necessary implication? Surely not. The summoning a debtor under the act of parliament is not a proceeding *in a matter of insolvency*, and the 6th section of the act, last part, shows that the legislature distinguished between a matter of insolvency and summoning a debtor, for they are mentioned there separately; and although that section does, in terms, give authority to the Insolvent Court in town, and the County Courts in the country, yet it not only does not affect the right of the bankruptcy commissioners in summoning debtors, but it appears to save that right, for all exclusive jurisdiction is carefully avoided. In addition to which, the 9th sect. strengthens the view I have taken as to the intention of the legislature to make the power cumulative; for, whilst it especially saves the right of parties to proceed, in respect of “*petitions*” under the aforesaid acts or *either* of them” in the Bankruptcy Court, if the proceedings had been already initiated there, it says nothing whatever of the right to *continue* the proceedings in respect to *summoning debtors*, which it, no doubt, would have done, if it were intended to withdraw the authority as in the other case. In the last-mentioned section, the use of the word “*either*” seems of some little moment, as exhibiting an intention to refer particularly to the *two* Insolvent Acts, and not to the Small Debts Act as well, the word “*either*” applying grammatically only to one of *two*.

The question is of considerable importance, and there may be some doubt about it; but, upon the whole, it certainly does appear, as I stated to you in my previous communication, *that the authority of the bankruptcy commissioners is not ousted*.

S. H.

[We presume that enough now has been written on this point, and that the controversy may here be ended.—ED.]

## WESTMINSTER COUNTY COURT.

*Before D. C. Moylan, Esq., Judge.*

### UNQUALIFIED AGENTS.

ONE of the principal features of the new bill was to do away with “agents” who, under the “Court of Requests” system, were in the habit of fleecing the poor creatures summoned to the courts most outrageously; but, instead of doing so, the number has considerably increased. In a case yesterday, one of them actually summoned a poor old woman for 10*s.*, “for,” as his particular stated, “two attendances upon you, receiving instructions for tak-

ing out a summons, attending before judges," &c.

The learned judge appeared astonished, and said, "Why, you ask for this just about twice as much as I should allow a professional man for his attendance. Instead of 10s., I should say 10d. would be a great deal too much. If you had lent your arm to the poor woman to support her to the court, you might have charged; but, for your presence before me, you cannot recover. The case is dismissed."

The "agent" said, "If that was the opinion of the judge, he should discontinue that branch of the profession." The judge thought the sooner he did so the better.—*From the Daily News*, Oct. 19, 1847.

## VISITS TO THE OLD LAWYERS.

### LORD KENYON.

MR. (afterwards) Lord Kenyon, lived in Bell-Yard, Temple Bar. Mr. Kenyon's early habits were those of strict economy: he had his shoulder of mutton roasted for one day, the next day he eat it cold, and for the third or fourth day he had it hashed, resembling the old Scotch trader, who told his son he lived at first very sparingly, so that in his old age he could afford himself a *chucky* on a Sunday; but he said, the young men in the present day when they began life wanted a *chucky* every day!

Mr. Kenyon, it is said, attended the sessions at Stafford; but the following anecdote will show that he had also first attended at a Welsh session. During a case there, a point arose, which was warmly argued by the counsel on both sides. Kenyon willing to show off, said, "Mr. Chairman, I recollect in the last term there was a case upon this subject, and I have a note of it in my pocket, which I will read to the court from my note-book:" the chairman said, "Don't read it from your note-book, sir, until I consult the bench;" he then said, "Gentlemen, you have heard what has been said as to Mr. Kenyon's note-book, I want your decision upon the question, whether Mr. Kenyon's note-book was evidence?" This was put, and there was a majority of the magistrates that Mr. Kenyon's note book was not evidence. Kenyon got up in a rage and said, "I never said it was evidence." The chairman said, "Sir, we have decided the question against you." Kenyon then said, "You have no more law than a tailor's goose;" and he left their sessions for ever.

When Kenyon, Arden, (afterwards Lord Alvanley,) and Selwyn were made King's counsel, Arden said, "Well! I don't think they'll say that we three were chosen for our beauty!"

S. P.

## REMARKABLE FOREIGN TRIALS.

### CASE OF JOSEPH VALLET, 1724.

In the early part of last century, there lived near the town of Pont de l'Ain, in the south of France, a brick and tile-burner, named Joseph Vallet. Joseph was an industrious man, skilful in his profession, and his bricks and tiles were in great request in the neighbourhood. He had a few evil wishers, and among these was M. Frillet, who was a rival in trade. Vallet's bricks and tiles commanded a better market than those of Frillet. This hostility of Frillet might have been of little consequence in ordinary circumstances. He possessed, however, the power as well as the inclination to torment his rival; for he was the king's attorney-general for the district, a function which rendered him a dangerous enemy to a poor man.

Joseph Sevos and Antoine Pin, two persons of loose character and intemperate habits, disappeared, after having been seen the previous evening—February 19, 1724—in a state of inebriety. They were nowhere to be found; but, after some inquiry, it was found that Pin had gone to Dombes and enlisted—a thing he had often threatened to do. But of Sevos there were no traces. This was the more strange, seeing he was in good circumstances, and was the possessor of a small property. Some thought Pin must have made away with his companion; but others combated this idea, under the impression that if Pin had committed murder, he would have fled no one knew whither, instead of enlisting as a soldier.

While public curiosity was on the stretch to discover what had become of Sevos, a rumour was propagated that all was not right with the family of Vallet the tile-burner. It was said they were very much discomposed, as if conscious of having committed a grievous crime. The report spread rapidly through the country, and the attorney-general, Frillet, lost no time in inquiring into the facts. The result of his investigations was, that on the 19th of August, 1724, he filed an information to the effect that, "On Sunday evening, the 19th of February, Joseph Sevos, after eating and drinking in Vallet's house, had suddenly disappeared, and had never since been heard of. That further, according to general belief, he had been murdered in the tiler's house, and buried under the stove; but that afterwards the body had been raised, and consumed in the kiln."

Upon this information proceedings were commenced by the authorities at Pont de l'Ain, and witnesses summoned. The first person was a man called Vaudan. He averred that, on the night of the 19th of February, having been to Mastalion, he was returning by Vallet's house, about three hours before daylight, when he heard a great noise, and clearly distinguished

This extraordinary case, narrated by Mrs. Crowe, we have abridged from Chambers's *Edinburgh Journal*. The remarkable nature of the recent criminal cases in France may render it not a little interesting. We find room for it before the close of the Vacation.



the words, "Help! help! I will confess everything! Forgive me this once, and spare my life!" Whereupon a voice, which he knew to be Joseph Vallet's, answered, "We want no more confessing; you must die!" This sort of dialogue continuing some time, the witness became alarmed; but, anxious to hear the end of it, he hid himself behind a bush, whence he distinctly heard the blows that were given to the victim. Suddenly, however, all became still; and presently afterwards the door of the house opened, and Vallet, accompanied by his wife and two sons, came out, bearing a dead body, which they carried to the brick kiln, and there buried, heaping a quantity of wood over the spot to conceal it. He added, that three or four days afterwards he made a pretext to call on Vallet at the brick kiln, in order to see if he could recognise the place; but, from what he observed, he concluded that the body had been removed; and he had since learned that the murdered person was Joseph Sevos; and that on Good-Friday the Vallets had consumed the body in the furnace.

There were several other witnesses examined; but on close inquiry, it appeared that they had received their information from Vaudan. However, the presumption appeared so strong against the Vallets, that their arrest was decreed, and executed with all the aggravated circumstances that so unnatural a crime seemed to justify. A brigade of mounted police, followed by a mob of the lowest class, proceeded to the tile-burner's house, and, amidst hooting and howling, dragged away the whole family to Pont de l'Ain, and shut them up in prison.

It happened that at this time Vallet was ill. He was suffering from a violent fever, accompanied by ague fits. Nevertheless, he was placed in a miserable dungeon, and loaded with irons; and his wife and sons were exposed to equally harsh and unjustifiable treatment. With not less injustice, his house was given up to pillage; the authorities neither took an inventory of his goods nor set a seal upon them. For eleven days the doors stood open, and the neighbours, quite willing to second the law, helped themselves to what they liked. On the twelfth, it occurred to the attorney-general that the premises should be searched for the clothes of the murdered man; but by this time it was useless to search for anything. The chests were broken open; the clothes, linen, &c., carried away, and doubtless the clothes of Sevos with them. Francisca, Vallet's sister, owned to having removed two bundles of her brother's property, in order to save them from the plunderers; but she declared that nothing belonging to Sevos or any other stranger was in them. She was, however, forced to produce them; and though nothing was found in them but what she had said, she was cast in the costs of the proceedings against herself, and fined twelve livres.

Whilst these things were going on, there was a party who looked on the whole affair with dissatisfaction. They ventured to express

doubts of the guilt of the Vallets, and protested against treating them with so much severity; whilst Antoine Pin, who was assuredly not free from suspicion, was allowed to range the world at pleasure. At last the matter got so public, that it reached Paris; it was talked of at court, and orders were forwarded to Dombes to arrest Antoine Pin, and send him forthwith to Pont de l'Ain. No sooner did the fugitive find himself in prison, than he volunteered a full confession. He said that nobody knew better than he the particulars of poor Sevos's murder; and that he was resolved, be the consequences what they might, that he would disclose the whole truth.

"On the evening of the 19th of February," said he, "I and Sevos were drinking at Vallet's house, when Sevos took it into his head, being drunk, to reproach Vallet with being the cause of one Dupler's death; whereupon, in a rage, Vallet took up a heavy tin can that stood upon the table, and struck Sevos such a blow with it, that he fell backwards to the earth, crying 'Mercy, mercy! Take all my money, but spare my life!' But Vallet, saying, 'Don't talk to me of mercy!'" continued to strike him, whilst his wife, with a fire shovel, also lent her assistance. Even Philippe, the eldest boy, joined in the murderous work; and amongst them, they soon put an end to poor Joseph Sevos: young Pierre the while standing sentinel at the door to keep off intruders. Vallet, when he saw that he had killed Sevos, wanted me to strike him too," continued Pin, "lest I should be a witness against him; but I would not. When Sevos was dead, they carried him to the kiln, and there buried him, covering the place with a heap of wood; and on Good-Friday they dug up the body and burned it. I know this, because on that day I called at the kiln, and not only smelt the burning, but saw the burnt bones in the furnace. Vallet told me that if ever I said a word about the matter, he would serve me as he had served Sevos; but, at the same time, I must own he behaved very handsomely to me in the business, paying my silence liberally both with wine and money. This testimony chimed in with that of Vaudan; and although the dead body was not forthcoming, that circumstance had little weight, when its disappearance was so well accounted for, and when the story was confirmed by the utter impossibility of finding any traces of Joseph Sevos as a living person.

The Vallets, however, persisted in denying the whole affair; they declared themselves innocent, and founded their defence on two circumstances. The first was, that, as they asserted, on the day after the disappearance of Sevos, blood was found in his bed, upon his pillow, on the bedclothes, and on the floor of his room, proving decisively that he had been murdered in his own house, and affording a strong presumption that Antoine Pin was the murderer. The second was, that on the night in question Pierre Vallet, who, according to the evidence admitted, had been so useful a coadjutor in the business, had in fact been absent



from home, having slept at the house of this schoolmaster at Poncin, in the same bed with two other boys. The authorities refused to investigate the truth of these allegations. On the contrary, they maintained that, being accused by two persons of the crime, the strongest suspicion attached to Joseph Vallet, and that his guilt was rather aggravated than otherwise by his attempt to shift the load from his own shoulders to those of Antoine Pin—an attempt in which he had entirely failed; and the attorney-general holding, therefore, the crime proved against him, demanded that sentence of death should be passed against the father, whilst confession should be wrung from the mother and sons by the rack. The jurisdiction of Pont de l'Ain, instead of complying with his request, condemned the whole family to the rack; whereupon Prillet, dissatisfied with a decision which gave the tile-burner a chance for his life, appealed to the parliament or high court of Dijon; who forthwith issued an order, transferring the prisoners to their own fortress; whither they were removed, followed by the hootings and execrations of the excited multitude.

The authorities of Dijon treated the matter with more earnestness and impartiality than those of Pont de l'Ain had done. They began by admitting the guilt of Vallet and his family, which they considered established beyond a doubt; but they looked upon Antoine Pin as in all probability equally guilty, and therefore to be treated as a criminal, and not as a witness, as had been hitherto the case. They alleged, in support of this opinion, his bad character, his suspicious flight, his avowed presence at the murder, which he not only made no attempt to prevent, but had since concealed; and they also dwelt on certain conditions he had made when he entered the regiment at Dombes, all tending to his own security in case of being pursued. In hopes of eliciting the truth, he was put to the rack; but the torture he endured did not alter his testimony; it only recalled one additional circumstance; namely, that Vallet had given him a louis-d'or to entice Sevos to his house on the day in question.

The fate of the Vallet family seemed now decided; and their case was the more hopeless, that by this last avowal Pin had brought himself under the arm of the law; but now, when least expected, conscience, that irrepressible witness, awoke and spoke for them. No sooner had he returned to his cell, than the thoughts of destroying a whole family by his perjury overpowered him. He passed a night of sleepless anguish, and when the morning dawned, he requested that some person qualified to receive his confession might be sent to him. One of the barristers engaged in the cause was immediately despatched to the prison, and Antoine Pin made the following narration:—

He confessed that his life had been a series of crimes, and that at length, in 1722, he had fallen upon young Philippe Vallet on the high road, and, without being recognised by the boy,

had robbed him of his money and clothes. Sevos, however, hidden behind a bush, had witnessed the crime, and had frequently reminded him that he had it in his power to bring him to the scaffold any day he pleased. He had shown no signs of an intention to do it, but nevertheless the threat disturbed Pin, and he never ceased wishing to get rid of so troublesome an acquaintance.

On the 19th February, they had gone together to Vallet's house, where they drank and chatted for some time. Sevos, he said, liked idling and drinking as well as he did: they repaired to various wine-houses after leaving Vallet's, in the last of which they sat till past midnight. There it was that, in a state of maudlin intoxication, Sevos pulled a bag out of his pocket, containing about forty dollars in silver, and exhibited the money to Pin, who was immediately seized with a desire to get possession of the booty, and at the same time relieve himself of a dangerous witness, who might turn against him some day when he least expected it. With this view he accompanied Sevos home, and when they got to the door, he represented that although they had drunk a great deal, they had had nothing to eat, and proposed getting something for supper. Sevos said he was hungry too; whereupon Pin went to the house of Michel Morel, whom he knocked up, and from whom he procured a loaf, which he carried to Sevos's, having on the way slipped into the house of his own father, and armed himself with a hatchet, which he hid under his coat.

Meanwhile Sevos, overcome by liquor, had lost sight of his hunger, and declared his intention of going immediately to sleep, requesting Pin to pass the night with him, to which the latter consented; and just as the unfortunate host was stepping into bed, Pin, who was standing behind him, brought down the hatchet with tremendous force upon his head. "Oh God! I am killed!" were the only words that passed the lips of the victim before he sunk to the earth, bathed in his blood.

"After rifling his pockets, I carried the body on my back to the stable," continued he, "where I covered it with manure; and then, feeling that Bresse was no safe nest for me, I started for Dombes, and enlisted as a soldier." He added that, before he quitted the house, he tried, without much effect, to efface the traces of his crime. "This is the truth," said he, "and the whole truth. I had neither aiders nor abettors; no one living was in my confidence; and the Vallets, father, mother, and sons, are innocent of the whole affair."

On being asked why, if this were the case, he had persisted in accusing the Vallets, he answered that his first intention when he was arrested was to confess the truth, but he had changed his mind; adding that Vaudan, the first witness against the Vallets, was a good-for-nothing scoundrel, on whose testimony no reliance whatever could be placed; and that if they secured him, they would learn what weighty reasons he had for giving false evidence.

As Pin persisted in his story, without waiting to investigate the matter further, he was at once condemned, on his own confession, to be broken on the wheel. He fully admitted the justice of his sentence; and the only request he made was, to be permitted to see the Vallets before he died, which being granted, he threw himself at their feet, reiterating his assertions of their innocence, and entreating their pardon. He seemed really penitent; and great as were his crimes, the earnest desire he evinced in the midst of his tortures to vindicate the guiltless and promote the ends of justice, won him the pardon and pity even of the injured Vallets.

Thus died Antoine Pin: and when he was dead, the authorities bethought themselves of searching the stable for the body, and of verifying his story by ascertaining what traces of the crime had been found about the house by those who first entered it after the disappearance of Joseph Sevós. But with respect to the house, the bed was gone, the place had been scoured, and nobody seemed able or willing to give any accurate account of what had been observed. Then with regard to the body, which Pin said he had hidden in the stable under a heap of manure, there was not only no body, but not a single bone to be found, nor any appearance to justify the suspicion that a body had ever been there. Here was a mystery! But Antoine Pin was silenced for ever, and who was to unravel the mystery? Perhaps Vaudan, whom he had arraigned: but as Pin was gone, if he did not choose to tell the truth, there was nobody to confront him. However, not knowing what else to do, they arrested Vaudan. He persisted in what he had said; "what he had heard he had heard;" and his evidence was true to a tittle. He felt it his duty to confess to the judge that his character was not unstained; he had *once* in his life committed a dishonest act—stolen three oxen and a filly from his master. The ingenuousness of this needless avowal told much in his favour.

The court was then induced to call for the records of the whole case as it had been tried at Pont de l'Ain. On looking over the papers, they found such strange informalities, so many unaccountable erasures, and so many equally unaccountable interpolations, that the affair took quite a new turn; and that which nobody had yet dared to suggest, began to be shrewdly suspected; namely, that the attorney-general, Frillet, had been playing a part in the drama, which as little comported with his reputation as with his office. A scrutiny ensued; and the result was, the complete justification of the Vallet family. Not only had every witness against them been either deceivers, or themselves deceived, but the evidences in their favour had been kept back or suppressed. It even came out, and was satisfactorily proved, that distinct traces of the murder had been found in Sevós's room; and that several persons had sworn to the facts before Frillet himself. Nay, not only so, but even traces of blood were distinctly visible on the floor; and

the very instrument with which Antoine Pin said he had committed the murder was discovered in the house.

No sooner did Vaudan find himself alone in prison, than he declared his intention of clearing up the whole affair. He avowed that his testimony was false from beginning to end; adding, that the officer who had summoned him as a witness, had desired him to wait upon the attorney-general as soon as the examination was over and relate to him all that had passed.

The parliament of Dijon, who, when they had got a criminal, seem to have proceeded with uncompromising diligence, lost no time in passing sentence on Vaudan, who was forthwith conducted to the scaffold, and died asserting the innocence of the Vallets. The real motive of this injudicious haste, which in this case and many others rendered the discovery of truth so difficult, was the fulness of the prisons. No sooner were they satisfied of a man's guilt, than they put him out of the way, to make room for the next comer; frequently thereby not only committing great injustice, but depriving themselves of the most important testimony.

Vaudan was executed on the 5th of October, and on the 12th an order was issued for placing another prisoner on the rack. This was a man called Maurice, who had made himself exceedingly busy in the whole affair, and on whom suspicion had at length rested. The moment Maurice felt the thumb-screws, he avowed himself a false witness, in the pay of the attorney-general, who was the originator of the whole cabal against the Vallets. Maurice declared that he had at first resisted, but that the threats and promises of Frillet had at length prevailed. He added that the attorney had two other assistants in the affair; namely, Torrillon, and a forester called Mallet, who had given themselves extraordinary trouble to bring in such witnesses as suited the great man's purpose. On the 13th, the day after he had made this confession, Maurice was executed; and he also died maintaining the innocence of the Vallets.

They had now put three persons out of the world on account of this affair: one for the murder, and two for perjury. But where was the greatest criminal of all? Where was the attorney-general Frillet? He, the suborner, the worse than murderer, the prosecutor of the innocent, the betrayer of his office and his oath. And where were the Vallets? They still in prison! Three persons had died declaring their innocence; every witness against them had been convicted of perjury or delusion; not a single circumstance remained uncontradicted that could in any way connect them with the death of Sevós; their justification was indisputable, clear, and triumphant; the whole accusation was proved to be the fruits of a cabal, the offspring of envy and malice: at least if it were not, what had Vaudan and Maurice died for? And yet, on the 13th of October, Frillet was at large, and the Vallets were in prison!

However, they were at length restored to liberty, with a recompense of 500 francs, (about 20*l.*), which Maurice had been made to pay as an expiation: at the same time measures were taken for arresting Frillet and his two abettors, Torillon and the forester; but the attorney-general was too well informed of what was going on to allow himself to be taken. He fled into Savoy, and found refuge in a cloister, where the arm of the law could not reach him.

In the meantime the prosperity of the Vallets was destroyed. Their healths had been injured, their money had gone to the lawyers, their house had been plundered, and everything belonging to them, except the bare walls, had either disappeared or been knocked to pieces. The old man had to begin the world again. It was up-hill work; but he did his best, and in time partially recovered his former position.

Several years had thus elapsed, and the Vallets had fought through the worst of their difficulties, when one day Pierre, the youngest son, being on business at a town called Bourg, met, as he was walking through the market-place, JOSEPH SEVOS! At first he thought it was a phantom of the imagination; but it proved to be no other than the living Sevos, whose disappearance had caused so much trouble. Perceiving himself to be recognised, Sevos attempted to escape in the crowd; Pierre promptly followed, and had the satisfaction of seizing him, and bringing him before a magistrate, of whom he demanded that both himself and the resuscitated man should be held in custody till the mystery could be investigated. The reserve and equivocations with which Sevos sought to baffle inquiry, suggesting a suspicion that he was not altogether innocent; he was accordingly removed to Dijon; but even there, it was not till he was threatened with the rack that the truth was elicited from him.

"On the 19th of February, 1724," said he "Antoine Pin and I went out for a day's drinking; and when the wine-houses were all closed, we went together to my house, where I invited him to sleep. I undressed, and was about to step into bed, when I received a violent blow upon the head. I fell to the ground, exclaiming that I was killed; and as I did not stir again, no doubt Pin thought I was. However, I was only stunned. He then rifled my pockets, in which I had about forty dollars, and afterwards dragged me to the stable, and covered me with manure. There I lay and listened till I heard Pin go away; then I went back to the house, and fastening the door, I stanchd the blood that flowed from my head as well as I could with old rags. In the morning I bound it up, and bethought me what I should do; but the fear of Antoine so entirely overcame me, that I durst not leave the house, nor even open the door; and for two whole days and nights I sat there, listening for his return, which I momentarily expected. However, he came no more, and on the third I

ventured, before the day had well broken, to slip out; and I managed, without being seen by anybody, to reach the attorney-general's, and to him I related what had happened. He listened to my story with attention, and, after some consideration, he advised me to quit the place. 'Pin,' said he, 'is a villain, who will stick at nothing; and if he finds out you are alive, he will never stop till he has completed his work. Take my advice, and leave this as fast as your legs can carry you, and the farther you go the better.' Sevos was a timid and weak man: to be once murdered he thought was enough. The advice of so influential a person as Frillet, a man who must necessarily understand the case so well, was not to be neglected. He fled, and never stopped till he thought himself far out of the reach of his enemy. Accident had at length brought him to the market of Bourg, where Pierre Vallet met him.

The agreement between this story and that of Antoine Pin was sufficient to insure its acceptance as far as it went; but it was generally believed that Joseph Sevos, timid as he was, had been influenced by something more than fear to abandon his native place and his little property. The attorney-general's empty-handed recommendation was not likely to have induced a man to condemn himself to exile for such a length of time. However, whether from the apprehension of suffering the legal penalty, as a party in the plot, or from the dread of the great man's vengeance, Sevos could not be brought to any further confession. On this occasion the rack was spared, the desire for a further revelation not being sufficiently strong on the part of the authorities to induce them to have recourse to it.

As soon as the news of Sevos's reappearance reached Frillet, he quitted his sanctuary, and loudly arraigned the parliament of Dijon, not only for their proceedings against himself, but also for having broken Antoine Pin upon the wheel for the murder of a man who was proved never to have been murdered at all. In spite of this, however, they arrested him, and instituted investigations, which led to the conviction of several other persons as parties in the conspiracy of which he had been the contriver: and now that the tide was apparently turning against him, there is no telling how far the tongue of Joseph Sevos might have been loosed, had he not, just at this juncture, most unexpectedly died in prison. Nevertheless, so strong was the evidence against Frillet, that he was condemned to death, and his property mulctd to the amount of 8000 livres, for the benefit of the Vallet family.

Nine hours had the parliament of Dijon sat before they could agree upon the sentence. The whole town had been in commotion for days; and all seemed anxious for the execution of a man who had proved himself such an oppressor. This vengeful feeling was doomed to be disappointed. The sentence of death against Frillet was commuted by the king into banishment for ten years. He received the intima-

tion with an affectation of pious gratitude, for he seems to have been as great a hypocrite as a sinner. But it was the will of God, whose justice and mercy he had outraged, that he should not profit by the corruption that had spared his life. On the day appointed for his quitting the prison, that life was required of him by a Judge incorruptible—he expired suddenly as they were throwing open the gates to set him free. His coadjutors in crime suffered various degrees of punishment, and the injured Vallets received the 8000 livres.

## LOCAL AND PERSONAL ACTS,

DECLARED PUBLIC,

AND TO BE JUDICIALLY NOTICED.

[Concluded from p. 564.]

214. An Act to empower the Midland Railway Company to extend the line of their Nottingham and Lincoln Railway at Lincoln, and to make a branch railway to their Lincoln station.

215. An Act to authorize certain deviations in the line of the Syston and Peterborough Branch of the Midland Railway, and the formation of a road or approach to the intended Manton station thereof.

216. An Act to authorize the purchase by the York and North Midland Railway Company of the interests of the shareholders in the Market Weighton Canal, and the purchase of the canal communicating therewith called Sir Edward Vavasour's Canal, of the Pocklington Canal, and of the Leven Canal, all in the East Riding of the county of York.

217. An Act to facilitate the effectual drainage of certain districts within the Commission of Sewers for the limits extending from East Moulsey in Surrey to Ravensbourne in Kent.

218. An Act for enabling the York and North Midland Railway Company to make a station at Hull, and certain branch railways connected with their railways and the said station; and for other purposes.

219. An Act for enabling the York and North Midland Railway Company to make a railway from their Church Fenton and Harrogate branch to Knaresborough and Borough-bridge.

220. An Act to enable the Edinburgh and Northern Railway Company to make a deviation and extension of their branch railway to Dunfermline, to make another railway from their Strathearn Deviation Railway to the Scottish Central Railway, and to make an alteration in the manner of constructing the said branch and Strathearn deviation across certain roads.

221. An Act for making a railway from Southport through Wigan to Pendleton near Manchester, with several branches, to be called "The Manchester and Southport Railway."

222. An Act to incorporate the Chester and Birkenhead Railway with the Birkenhead, Lancashire, and Cheshire Junction Railway,

223. An Act for enabling the Birkenhead, Lancashire, and Cheshire Junction Railway Company to make a deviation in the Chester branch of their railway; and for other purposes.

224. An Act to enable the East Fife Railway Company to make a deviation in their main line, and to improve the Junction with the Edinburgh and Northern Railway near Markinch.

225. An Act to empower the Eastern Union Railway Company to make a railway from the Eastern Union Railway at Manningtree to Harwich, with branches thereout; and for other purposes.

226. An Act for making branch railways from the Great Western Railway to Henby and to Radstock; to widen certain portions of the Great Western Railway; to enable the Great Western Railway Company to purchase or amalgamate with the Birmingham, Wolverhampton, and Dudley Railway, and to purchase the Wycombe and Great Western and Uxbridge Railways; and for other purposes.

227. An Act to authorize certain alterations in the line of the Liverpool, Manchester, and Newcastle-upon-Tyne Junction Railway; and for other purposes.

228. An Act to empower the London and North-western Railway Company to enlarge their stations at Liverpool and Crewe; and for other purposes.

229. An Act to authorize the sale of the Paisley and Renfrew Railway to the Glasgow, Paisley, Kilmarnock, and Ayr Railway Company, and the improvement of the said railway by that company.

230. An Act to enable the South-eastern Railway Company further to widen the London and Greenwich Railway, and to enlarge their London Bridge Station.

231. An Act to authorize certain alterations in the line of the Waterford and Limerick Railway; and to amend the act relating thereto; and for other purposes.

232. An Act for making certain lines of railway in the county of Lancaster, to be called "The Oldham Alliance Railway."

233. An Act for making a railway, and branch railways in the county of Chester, to be called "The Manchester and Birmingham and North Staffordshire Junction Railway."

234. An Act to enable the Glasgow, Paisley, Kilmarnock, and Ayr Railway Company to make certain branch railways in the county of Renfrew; and for other purposes.

235. An Act to enable the Eastern Counties Railway Company to make a railway from Wisbech to Spalding.

236. An Act to authorize the consolidation into one undertaking of the Oxford and Bletchley Junction Railway Company and the Buckingham and Brackley Junction Railway Company, and to enable the company so to be consolidated to make extension lines to Bicester and Aylesbury, and an alteration of the line into the city of Oxford.

237. An Act to enable the Caledonian

**Railway Company to extend their station in Edinburgh, and to make branch railways to Granton and to the Edinburgh and Glasgow Railway.**

238. An Act to enable the Chester and Holyhead Railway Company to extend their line of railway to the proposed new harbour at Holyhead, and to contribute towards the expense of constructing the said harbour.

239. An Act to incorporate the Edinburgh, Leith, and Granton Railway Company with the Edinburgh and Northern Railway Company.

240. An Act to enable the Liverpool, Manchester, and Newcastle-upon-Tyne Junction Railway Company to make a railway from the Burnley branch of the Manchester and Leeds Railway in the township of Habergham Eaves, in the parish of Whalley, in the county of Lancaster, to the East Lancashire Railway in the same township; and for other purposes.

241. An Act to authorize a certain alteration in the line of the Reading, Guildford, and Reigate Railway, and to amend the act relating thereto.

242. An Act to enable the South Devon Railway Company to extend the line of the South Devon Railway to Torquay and to Brixham; and for other purposes.

243. An Act to amend the Exeter and Exmouth Railway Act, 1846, and to enable the London and South-western Railway Company to subscribe towards, lease, or purchase the said railway.

244. An Act for authorizing the sale of part of the Brighton and Chichester (Portsmouth Extension) Railway to the London and South-western and the London, Brighton, and South Coast Railway Company, and to the use by the last-mentioned company of part (Wandsworth to London) of the London and South-western Railway.

245. An Act for making a branch railway from the Glasgow, Airdrie, and Monklands Junction Railway at or near Whitevale Street, Glasgow, to the Edinburgh and Glasgow Railway at or near Cowlawrs; and to amend the acts relating to such railways.

246. An Act to enable the Edinburgh and Bathgate Railway Company to deviate a portion of their main line, and for other purposes.

247. An Act to make certain deviations in the authorized line of the "Manchester, Buxton, Matlock, and Midlands Junction Railway," and to amend the act relating thereto.

248. An Act to enable the Royston and Hitchin Railway Company to lease or sell their line, and to authorize the said company to enter into contracts and complete arrangements with the Great Northern Railway Company.

249. An Act to amend the acts relating to the London and South-western Railway.

250. An Act to repeal an act passed in the 55th year of his late Majesty King George the Third, for building a new church and also a workhouse in the parish of Bathwick, in the county of Somerset, and another act passed in the 57th year of his said late Majesty to amend

the said act, and to provide for the future administration and exercise of the trusts and powers thereby respectively created.

251. An Act for paving, lighting, watching, draining, cleansing, regulating, and otherwise improving the town of Lytham, in the county palatine of Lancaster, for supplying the inhabitants thereof with water, and for establishing and regulating a market and market place therein.

252. An Act for paving, lighting, watching, cleansing, and otherwise improving the town and neighbourhood of Tunstall, in the county of Stafford, and for improving and regulating the market place and markets therein.

253. An Act for better paving, cleansing, draining, regulating, lighting, and improving the district of Rathmines, Mount Pleasant, Ranelagh, Cullenswood, Milltown, Rathgar, and Haroldscross, and such other portions of the parish of Saint Peter within the barony of Uppercross, in the county of Dublin, and for otherwise promoting the health and convenience of the inhabitants.

254. An Act for the further improvement of the borough of Belfast.

255. An Act for improving the streets and public places, and erecting a town hall, and improving the markets, in the township of Blackburn, in the county palatine of Lancaster.

256. An Act for paving, lighting, watching, draining, cleansing, and improving the town of Saint Ives, and the neighbourhood thereof, in the county of Huntingdon.

257. An Act for paving, lighting, cleansing, watering, regulating, and otherwise improving the town of Portsmouth, in the county of Southampton, and for removing and preventing nuisances and annoyances therein.

258. An Act for lighting, paving, cleansing, sewerage, draining, regulating, and improving the town and neighbourhood of Bingley, in the West Riding of the county of York, and for other purposes connected therewith.

259. An Act for constructing and maintaining a bridge across the river Slaney, near the town of Wexford, with approaches, and for taking down the present bridge there.

260. An Act to amend the several acts relating to Swansea harbour.

261. An Act for better supplying with water the borough of Liverpool and the neighbourhood thereof, and for authorizing the mayor, aldermen, and burgesses of the said borough to purchase the Liverpool and Harrington Waterworks and Liverpool Waterworks.

262. An Act for better supplying with water the inhabitants of the town and neighbourhood of Leeds in the county of York.

263. An Act for making docks at Jarrow Slake in the river Tyne.

264. An Act to authorize the Birkenhead Dock Commissioners to construct an additional Dock and other works at Birkenhead in the county of Chester, and for other purposes.

265. An Act to alter and amend the acts relating to the Birkenhead Commissioners Docks, and to make further provision with respect to

the construction of the sea or wharf walls along Wallasey Pools, and for other purposes.

266. An Act for authorizing the sale of the Leominster Canal, and other property of the company, or proprietors of the Leominster Canal Navigation, and for winding up and adjusting the concerns of the same company.

267. An Act for the better drainage of lands called Crowland Washes and Fodder Lots, Cowbit Wash, and Deeping Fen Wash, in the several parishes of Crowland, Spalding, and Pinchbeck, the hamlets of Cowbit and Peakhill, and the extra-parochial place or lands called Deeping Fen, or Deeping Fen Welland Washes, all in the county of Lincoln.

268. An Act to change the name of the Liverpool Fire and Life Insurance Company, and for other purposes relating thereto.

269. An Act to enable the National Mercantile Life Assurance Society to sue and be sued in the name of a nominal party, and for other purposes relating to the said company.

270. An Act to enable the Coventry, Nuneaton, Birmingham, and Leicester Railway Company to sell and transfer their railway, works, and interests to the London and North-western Midland Railway Companies, or either of them; and for other purposes.

271. An Act to enable the Saint Helen's Canal and Railway Company to make branch railways to Warrington and to Blackbrook, and to make certain alterations in their railway, and also to take a lease of the Rainford branch of the London and North-western Railway.

272. An Act to enable the Great Northern Railway Company to make a railway from Saint Albans to the Great Northern Railway at Hatfield, and thence to the town of Hertford.

273. An Act for making a deviation in the line of the Taw Vale Railway, for making branches therefrom to the towns of Bideford and South Molton, for enlarging the dock, and for amending the acts relating thereto.

274. An act to enable the Edinburgh and Northern Railway Company to improve the Ferry between Ferry-Port-on-Craig and the North Shore of the river Tay.

275. An Act for consolidating the Lynn and Ely, the Ely and Huntingdon, and the Lynn and Dereham Railway Companies into one company, to be called "The East Anglian Railways Company."

276. An Act for enlarging the present station of the London, Brighton, and South Coast Railway Company at or near London Bridge, and for the division of the present station between the London, Brighton, and South Coast and the South-eastern Railway Companies, for the separate accommodation of the traffic of such two railway companies.

277. An Act to enable the Edinburgh and Northern Railway Company to construct branch railways to Saint Andrew's and Newburgh harbour, and to divert and alter the levels of certain turnpike roads in the line of the Newport Railway Extension.

278. An Act to empower the London and North-western Railway Company to make a

certain branch railway from Kenilworth to Berkswell, and to widen the line from agnes to Coventry, all in the county of Warwick; and for other purposes.

279. An Act to enable the Manchester, Sheffield, and Lincolnshire Railway Company to sell the water not required for their canals called the Peak Forest Canal and Macclesfield Canal, and to make additional works in connexion with such canals.

280. An Act for widening and improving Cannon Street, and for making a new street from the west end of Cannon Street to Queen Street, and for widening and improving Queen Street, and for effecting other improvements in the city of London.

281. An Act to amend an act for improving the navigation from the Hythe at Colchester to Wivenhoe in the county of Essex, and for better paving, lighting, and improving the town of Colchester; and for making a new channel and deepening the river Colne from Wivenhoe to Ram's Hard leading towards the sea.

282. An Act for better supplying with water the inhabitants of the borough of Leicester, and certain parishes and places adjacent thereto, in the county of Leicester.

283. An Act for removing doubts as to the purchase of lands by the Dock Company at Kingston-upon-Hull in certain cases.

284. An Act to purchase and define the manorial and market rights of Stockport, to establish public parks, to purchase or lease water-works, to build bridges, and to make other communications within the borough of Stockport.

285. An Act for establishing a general cemetery at Wolverhampton in the county of Stafford, and for making certain direct roads and approaches to the said Cemetery from the town of Wolverhampton and the neighbourhood thereof.

286. An Act to enable the Great Northern Railway Company to make a branch railway near Sutton in Lincolnshire.

287. An Act to enable the Great Northern Railway Company to make certain alterations in the line and levels of their railway between London and the neighbourhood of Grantham.

288. An Act to enable the East Lancashire Railway Company to alter the line and levels of their railway, and to make a branch railway therefrom; and for other purposes relating thereto.

289. An Act to enable the East Lancashire Railway Company to extend the Liverpool, Ormskirk, and Preston, and the Blackburn and Preston lines of their railway, into Preston; and for other purposes relating thereto.

290. An Act to enable the Northern Counties Union Railway Company to make certain alterations in their railway in the parishes of Aygarth and Wensley in the North Riding of the county of York.

291. An Act for making several lines of railway between Penistone, Barnsley, Elsecar, and Doncaster, in the West Riding of Yorkshire.



to be called "The South Yorkshire, Doncaster, and Goole Railway;" and for authorising the purchase of part of the Sheffield, Rotherham, Barnsley, Wakefield, Huddersfield, and Goole Railway, and of the Dun Navigation and Dearne and Dove Canal.

292. An Act for enabling the Wear Valley Railway Company to purchase or lease the Bishop Auckland and Weardale Railway, the Wear and Derwent Railway, the Weardale Extension Railway, and the Shildon Tunnel, and to raise an additional sum of money; and for other purposes.

293. An Act for establishing a general cemetery for the interment of the dead in the parish of Newbury near the town of Newbury in the county of Berks.

294. An Act to empower the London and North-western Railway Company to make divers branch railways in the county of Lancaster; and for other purposes.

295. An Act for the consolidation of the Duffryn, Llynvi, and Porth Cawl Railway Company with the Llynvi Valley Railway Company.

296. An Act for forming and regulating "The Timber Preserving Company;" and to enable the said company to purchase and work certain letters patent.

297. An Act for improving and regulating the harbour of Sutton Pool within the port of Plymouth in the County of Devon.

## PRIVATE ACTS,

PRINTED BY THE QUEEN'S PRINTER,

*And whereof the Printed Copies may be given in Evidence.*

1. An Act to enable the minister of the parish of Dalkeith in the county of Edinburgh to feu his glebe lands lying in the said parish.

2. An Act to empower the devisees of the Most Noble Francis Duke of Bridgewater, deceased, to appropriate to building purposes a portion of Cleveland Square, in the parish of Saint James, Westminster, and to improve the approaches thereto.

3. An Act to divide the parish and rectory of Doddington, otherwise Dornington, into three separate and distinct parishes and rectories, and to endow the same out of the revenues of that rectory, and to make provision for the further division of such rectories and parishes; and for other purposes connected therewith.

4. An Act for dividing, allotting, and inclosing certain open marshes and waste lands in the township of Terrington in the county of Norfolk.

5. An Act for facilitating the proof of the will of the Right Honourable George Obrien, late Earl of Egremont and Baron of Cocker-mouth, in certain actions in Ireland.

6. An Act for exchanging freehold estates belonging to Robert Kellett Long, Esq., for freehold estates settled by the will of Robert

Churchman Long, deceased, and for authorizing the leasing of the settled estates.

7. An Act for exchanging certain detached portions situate in the county of Sutherland of the entailed estate of Poyntzfield, belonging to Sir George Gun Munro, Knight, for the lands of Udale, situate in the county of Cromarty, belonging to James Matheson, Esq., contiguous to the said estate of Poyntzfield, and for securing the purchase of other lands, to be entailed, and to form, along with the said lands of Udale, parts of the said entailed estate of Poyntzfield.

8. An Act to rectify an error in an act of the last session, intituled "An Act to enable the Trustees appointed by Mrs. Jane Ferguson, deceased, to sell the lands of Laverocklaw, and also certain subjects situate in the village of Ormiston, vested in them in trust, and to apply the price to be obtained, and certain trust monies in their hands, in the purchase of other lands, for the purposes of the said trust."

9. An Act for exchanging hereditaments subject to uses declared by the will of Anthony Compton, Esq., deceased, for hereditaments belonging to the Right Honourable Henry Earl Grey, for selling and exchanging other hereditaments subject to the same uses, and for investing the net proceeds to arise from such sales and exchanges in the purchase of other hereditaments, to be settled to the same uses; and to authorize the granting of leases of part of the hereditaments subject to the uses of the said will.

10. An Act to enable Edward Legh and Mary Anne his wife, and others, to make and authorize sales, exchanges, and also building and other leases, of estates at Newington otherwise Newington Lucies and Lewisham respectively, in the county of Kent; and for other purposes.

11. An Act to enable Charles Gordon Duke of Richmond and Lennox to borrow a certain sum of money upon the security of his entailed estates, for repayment to him of a portion of the monies laid out by him in the improvement of these estates.

12. An Act for enabling certain estates in Ireland of the Right Honourable William Earl of Devon to be sold, and the proceeds arising therefrom, after payment of certain charges and incumbrances, to be applied in payment or towards reduction of the charges and incumbrances affecting the family and other estates in England late of the said Earl of Devon; and for authorizing the raising by mortgage of the estates in Ireland, until sold, of a limited sum of money, to be applied, under the direction of the High Court of Chancery in England, in or towards permanently improving the said estates in Ireland; and for making provision for the liquidation and payment of the principal monies and interest; and for other purposes.

13. An Act for enabling the sale and conveyance of certain cottages, gardens, and other improved lands comprised in the will of the Right Honourable John William Earl of Dudley, deceased, and for laying out the sale monies in the purchase of estates to be settled to the uses of the said will; and for other purposes.



14. An Act for authorizing the sale and exchange of certain lands, collieries, hereditaments, and mining stock, forming part of the estate of John Bowes late Earl of Strathmore, and for enabling the trustees to shift the charges affecting the inheritance of the same lands and hereditaments; and for other purposes.

15. An Act to incorporate the president and trustees of Huggens's College at Northfleet in the county of Kent, and to enable them the better to carry on the charitable designs of the said college.

16. An Act to increase the number of trustees for the management of the Dollar Institution of John M'Nabb's School, and to incorporate the trustees.

17. An Act for enabling conveyances to be made of the estate and interest of Elizabeth Goddard (who is of unsound mind) in lands and tenements a partition or division whereof is directed by a decree of the High Court of Chancery made in a cause "*Whitmore v. Goddard*."

18. An Act to authorize the sale of an estate called Morrant's Court, otherwise Morant's Court, otherwise Madam's Court, in the county of Kent, late the property of John Fry, Esq., deceased, and for applying the monies to arise by such sale in payment of incumbrances affecting the said estate, and for investing the residue of such monies for the benefit of the parties beneficially interested in the said estate.

19. An Act for exonerating the trustees of the deceased George Paterson, of Castle Huntly, Esq., the elder, of their expenditure in making improvements upon the entailed estates left by him; for enabling them to acquire certain lands contiguous thereto, and to grant feus; and for certain other purposes.

20. An Act for authorizing the sale of so much of the entailed lands and estates of Dundas, in the county of Linlithgow, belonging to James Dundas, Esq., as may be required to pay the debts affecting or that may be made to affect the said estates; and for enabling the said James Dundas to borrow money upon the security of the said lands and estates, for repayment of a portion of the monies laid out in the improvement of the said lands and estates, and in building a mansion house and offices for the same.

21. An Act for authorizing the granting of a new lease of certain coal mines and hereditaments in the county of Durham, late the estate of John Lyon, Esq., deceased.

22. An Act to vest in trustees certain lands in the vicinity of Glasgow which belonged to the late Colin Gillespie, for the purpose of selling a portion thereof to pay off the debt affecting the same, and of partitioning the feuing out the remainder for the benefit of his heirs.

23. An Act for extending the time for enrolling (pursuant to the statute 3rd and 4th William the 4th, c. 74,) a deed executed in the colony of New South Wales for the purpose of enlarging a base fee in hereditaments at Mes-singham in the county of Lincoln into an estate in fee simple.

24. An Act for vesting in the company of proprietors of Northam Bridge and Roads certain lands in the town and county of Southampton, and for empowering them to sell the same.

25. An Act for enabling the trustees of the will of George Charles Rooke, Esq., deceased, to carry into effect a contract for the purchase of the life estate and interest of Hannah Rooke, widow, in the real and personal estates of the said George Charles Rooke, respectively devised and bequeathed by his will, and for raising money for that purpose; and for payment of the debts of the said George Charles Rooke, and of the legacies and arrears of annuities bequeathed by his said will; and for other purposes incidental thereto.

26. An Act for enabling leases, sales, and partitions to be made of certain estates in the county palatine of Lancaster heretofore belonging to John Penson and Molly his wife.

27. An Act to enable the trustees of a charity called the Leeds Free Grammar School to sell parts of the trust estates belonging to the said charity, and to purchase other lands, for the uses and purposes of the said charity; and for other purposes.

28. An Act to empower the Dean and Chapter of Westminster to sell and exchange certain lands and hereditaments in the parishes of Paddington and Saint George Hanover Square, in the county of Middlesex, and to lay out the monies to arise from such sale in the purchase of other lands and hereditaments; and for other purposes.

29. An Act to vest certain estates in the county of York in England in Alexander William Robert Bosville and Godfrey Wentworth Bayard Bosville, and in Skye and North Uist in Scotland in the Right Honourable Godfrey William Wentworth Lord Macdonald, and to enable the said Lord Macdonald to sell parts of the said estates in Scotland, for the payment of debts; and for other purposes.

30. An Act for authorizing the sale to the Right Honourable William Baron Ward of certain freehold and copyhold hereditaments in the county of Worcester devised by the will of Thomas Pickernell, Esq., deceased, and for directing the investment of the purchase money in other hereditaments, to be settled in like manner.

31. An Act for authorizing leases to be granted for quarrying and mining purposes of certain estates in the Isle of Purbeck in the county of Dorset, subject to the uses of the will of Maria Sophia Richards, Spinster, deceased.

32. An Act for enabling the Tunstall Market Company to sell their estate and wind up their concerns, and for dissolving the company.

33. An Act to enable the trustees and executors of the will and codicil of Sir John Saint Aubyn, Baronet, deceased, to raise a sum of money towards the liquidation of his debts by mortgage of his devised estates in the county of Devon; instead of selling the same

leasehold hereditaments in the county of Cornwall; and to enable the said trustees to convey the reversion in fee simple in the same hereditaments, vested in them for that purpose under the will of the Reverend John Molesworth Saint Aubyn, deceased, to the uses of the said will and codicil of the said Sir John Saint Aubyn, so as to convert such leaseholds into a fee simple estate in possession; and for other purposes.

34. An Act for the better support and better regulation of the Hospital of the Holy Jesus, founded in the Manors in the town and county of Newcastle-upon-Tyne, at the costs and charges of the mayor and burgesses of the town of Newcastle-upon-Tyne, in the county of the town of Newcastle-upon-Tyne aforesaid, and for confirming sales and other dispositions made of estates formerly part of the possessions of the said hospital; and for other purposes; and for repealing an act of the last session of parliament for the same purposes.

35. An Act to authorize the construction of a canal on the estates devised by the will of the late Mr. Jonathan Passingham, for the transport of bricks manufactured on such estates, and to enable the trustees of the will to complete the purchase of an adjoining estate contracted for by them; and for other purposes.

#### PRIVATE ACTS,

##### NOT PRINTED.

36. An Act to dissolve the marriage of Robert Montgomery Martin, Esq., with Jane Avis Francis Martin, his now wife, and to enable him to marry again; and for other purposes therein mentioned.

37. An Act to extend the Relief given by an act of the 6th and 7th years of the reign of her present Majesty, intituled "An Act to declare that certain Persons therein mentioned are not Children of the Most Honourable George Ferrars Marquis Townshend."

38. An Act to dissolve the marriage of Thomas Brooks with Mary his now wife, and to enable him to marry again; and for other purposes.

#### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

##### Lord Chancellor.

*Hills v. Nash.* July 26th, 1847.

##### EVIDENCE OF UNINTERESTED PARTNERS.

*A bill having been filed by the plaintiff for contribution from his co-partners in an unsuccessful adventure, Held, that the evidence of those defendants who had disclaimed all profits and had been released by the plaintiff from all demands by him, was admissible for the purpose of establishing the fact of the co-partnership.*

*Mr. Roupell, with whom was Mr. Pigott,*

stated that this was an appeal from a decree of the Master of the Rolls, and involved a preliminary question respecting the evidence of two of the plaintiff's former partners, who were now made defendants by order of Lord Chancellor Lyndhurst, contrary to the opinion of his Lordship the Master of the Rolls, (1 Phil. 594). The bill was filed for a partnership account, and for the purpose of making the estate of a Mr. Nash, deceased, and one of the alleged partners, liable for a certain proportion of the loss sustained in a corn speculation stated to have been entered into by the plaintiff conjointly with Nash, Carpenter, Webb, and Sheppard, who were respectively to have participated in given proportions in the profits, if any, of the transaction, and to have contributed in like manner to any loss which might be sustained. The adventure having been unsuccessful, Carpenter paid his portion of the deficiency, and an account had been settled between the plaintiff and Webb (who had become insolvent) and Sheppard; money had been paid by the latter two, and they, upon being released by the plaintiff from all his demands upon them, had released all their claims in the partnership affair. The object of the bill was to obtain from the executors of Nash his proportion of the loss, and the Master of the Rolls had permitted the evidence of Webb and Sheppard to be read for the purpose of establishing the fact of the partnership. An objection was taken, that they had such an interest in the suit as would disqualify them from giving evidence in the cause, but the learned counsel contended that they were merely formal parties, and might therefore, by the practice of the courts of equity, be made witnesses.

*Mr. J. Russell and Mr. Smythe, contra, submitted, that the plaintiff could not, by releasing two of several partners, obtain evidence from them whereby the remaining co-partners might be damnified. They argued that the defendants were substantial parties, as they had an interest in the subject-matter of the suit. Another objection was, that there was no order that their evidence should be read, but simply an order to admit it, saving all just exceptions. They cited *Murray v. Shudwell*, 2 Ves. & Bea. 401; *Blackett v. Weir*, 5 Barn. & Cres. 385; and *Ex parte Benfield*, 5 Ves. 424.*

*The Lord Chancellor, without calling for a reply, said, he had no doubt from the statement that the evidence was receivable. To prevent it there must be an interest resulting from the suit, and not merely a remote contingent interest. After stating the facts, his lordship said the suit had terminated as to the one who had paid his share. The other two had been released by the plaintiff and had disclaimed all interest. It might have been different if there had been any profits. Their disclaimer would enable the plaintiff to reimburse himself out of the estate of Nash, and it appeared to his lordship, therefore, that the Master of the Rolls came to a right conclusion when he decided that their evidence might be received.*

**Habit Interrogatories.**

**Anon. July 28, 1847.**

**SOLICITOR.—7 & 8 VICT. c 73.—ARTICLES.**

*To induce the court to exercise the power given it by the 9th sect. of the 7 & 8 Vict. c. 73, of directing that the service of an articted clerk shall be taken to commence before the filing of the affidavits required by the 8th sect., some ground for the non-compliance with the regulations of the act must be shown.*

Mr. Toller moved, under the 9th sect. of the 6 & 7 Vict. c. 78, that the service of an articted clerk, whose articles bore date in Feb. 1846, might be directed to commence from the date of the articles, notwithstanding the omission of the solicitor to whom he was articted to file the affidavit of the execution of the articles required by the act, within six months after their execution. He dwelt upon the hardship of the clerk having to suffer for the neglect of the attorney, but could not adduce any other reason for the non-compliance with the statutory requirements than inadvertence.

Lord Langdale said, that for aught he knew the attorney might be answerable in damages to the clerk, but before he could interfere, some ground for interference must be shown him. To hold that in any case of inadvertence, the rule might be dispensed with, would make it absurd, as would be seen by supposing such a provision to be inserted in the act.

**Vice-Chancellor Knight Bruce.**

**Bousfield v. Mould. June 12 & 19, 1847.**

**EVIDENCE.—COSTS.—BANKRUPT.—VENDOR AND PURCHASER.**

*A bankrupt from whom a purchase had been made was examined as a witness for the plaintiff in a suit instituted by the purchaser. Upon an objection being taken to his evidence, on the ground of his interest in the surplus of his estate, the cause was ordered to stand over. A release was then executed, and liberty was given to the plaintiff to prove the execution, and to examine the bankrupt upon the old interrogatories, or upon the new, the plaintiff paying the costs as between solicitor and client.*

THIS suit was instituted by the purchaser from the assignees of Joseph Mould, a bankrupt, of his interest in a mortgage debt, secured upon certain leasehold premises, of which the mortgagor was a tenant in common with some of the defendants. The bill was filed for the purpose of obtaining payment of the mortgage debt. The plaintiff had examined the bankrupt as a witness to prove his interest, at the time of the bankruptcy, in the mortgage debt, but the cause coming on to be heard, an objection was taken to his evidence being read, in consequence of his not having released his interest in the surplus under the fiat, and it was accordingly ordered that the cause should stand over, with liberty for the plaintiff to ex-

hibit interrogatories to establish the interest of the bankrupt.

Mr. Bacon, for the plaintiff, now moved for liberty to prove the allowance of the certificate, and the execution of a release by the bankrupt, and to re-examine the bankrupt on the interrogatories upon which he had already been examined, or upon other interrogatories for that purpose. The motion was supported by an affidavit that the omission to obtain the execution of the release was purely accidental. He referred to *Milward v. Atkins*, (cited in a note to *Cox v. Allingham*, Jac. 339.)

Mr. Russell, for the defendants, opposed the motion, and cited *Vaughan v. Worral*, 2 Swanst. 401.

June 19. His Honour this day ordered, that the plaintiff should be at liberty to examine the bankrupt on the same interrogatories on which he had before been examined, or to examine other witnesses to prove the certificate and release, but that the plaintiff must pay the costs of the application and of the former examination as between solicitor and client.

**Vice-Chancellor Wigram.**

**Fisher v. Fisher. April 21 & 22, 1847.**

**PARTIES.—EVIDENCE.—INSOLVENT.**

*The court refused to make an order for examining an insolvent who had been plaintiff in the original suit, although his assignees had, in consequence of the defect, filed a supplemental bill for the same objects, and asked leave to examine him.*

THIS was a motion, on behalf of assignees, who were plaintiffs to the supplemental bill, for leave to examine the insolvent, who was plaintiff to the original bill, the object of both bills being identical, viz., for an account of costs due from the defendant, as agent, who had received them for the plaintiff, (the insolvent,) his principal. The issue raised between the parties was, as to the fact of agency at the time when the costs were received.

Mr. J. Russell and Mr. Sidney Smith appeared in support of the motion, and contended that the insolvent's evidence was admissible, his interest having ceased from the date of the insolvency, or of the filing of the supplemental bill by his assignees.

The motion was opposed by Mr. Bagshawe, who submitted that the insolvent still remained liable in respect of the costs, and his evidence was not therefore receivable. If he were not a party, the present special application was unnecessary. Upon both grounds, therefore, it ought to be refused.

The following cases were cited:—*Hewatson v. Tooke*, 2 Dick, 799; *Armiter v. Swanton*, 1 Amb. 393; *Mutteur v. Mackreth*, 1 Ves. J. 142; *Ewer v. Atkinson*, 2 Cox, 393; *The Corporation of Colchester v. —*, 1 P. Wms. 595; *Wheeler v. Malins*, 4 Mad. 171; *Sharp v. Hullett*, 2 S. & S. 496; *Benson v. Chester*, Jac. 577; *Lord Huntingtower v. Sherborn*, 5 Bann. 380; *Edwards v. Goodwin*, 10 Sim. 123; *Robertson v. Southgate*, 5 Hare, 223.

April 22. Sir James Wigram, V. C., now delivered judgment as follows:—This case is manifestly one, merely one of form, and of more or less expense. It is clear that the assignees, although at liberty to drop the suit, have not done so, but have adopted it. They might have commenced a new suit, and then they might, as a matter of course, have examined the insolvent as a witness, saving just exceptions. Having, however, thought proper to adopt the suit, they will have to take the consequences of doing so. The question is, whether the exclusion of the insolvent's evidence is one of those consequences of the adoption by them of the original suit—whether the insolvent, upon these pleadings, is, for any purpose, to be considered as a party. If he is, he cannot be examined; if he is not, then he is a competent witness for the assignees in their supplemental suit. First, then, is he a party? Will he be liable for the costs? Now, the practice is well settled, that where a sole plaintiff becomes bankrupt, and his assignees do not choose to adopt the suit, the defendant may dismiss the bill, but without costs. *Wheeler v. Malins*, 4 Mad. 171; and *Lord Huntingtower v. Sherborn*, 5 Beav. 380, are authorities for that proposition. And it has been admitted by the defendant's counsel, that the insolvent does not remain a party upon the record as to any demand for costs in the cause. Then, as to his interest in the result of the suit, it appears that all the interest and liabilities of the insolvent have been transferred to his assignees. Then, does he remain a formal party to the suit? It is admitted that his name must remain in the original suit, and that all future orders and decrees will be entitled in the original suit; but this does not appear to answer the question. The original cause was instituted by, and in the name of the insolvent, and his name will still be used therein as a means of describing that suit; but the question is, whether the original suit is not merged in the supplemental, and the insolvent as completely discharged as if the assignees had filed an original bill. Although, for the purpose of describing the original suit, the name of the insolvent must be still used, he will not have to be served with any proceeding in the cause, nor, in the event of his death, will his personal representatives be necessary parties to any future proceedings. In the absence of authority upon the point, my conclusion would have been, that the insolvent had ceased to be a party, and that the assignees had, in truth, suppressed the proceedings in the original suit, and that nothing remained but the supplemental suit. I do not, however, mean to go beyond the case before me, nor to say what my decision would be in the possible case of the bankruptcy being disputed. *Robinson v. Southgate*, 5 Hare, 223. The remaining question is, how far the present case is affected by the decisions in *Hewatson v. Tooke*, and *Ewer v. Atkinson*? In the former of these cases, Sir Lloyd Kenyon had made an order similar to the one now asked, which the Lord Chancellor had discharged. I cannot but

think, on reading that case, that the Lord Chancellor did so on the ground suggested by Dickens, namely, that the insolvent or bankrupt remains a party, not in name only, but liable for costs. In *Ewer v. Atkinson*, 2 Cox, 393, three persons were made parties; the three filed the bill, and the three became bankrupt. Application was made by the assignees for leave to examine one of the three. The Master of the Rolls, in that case, after observing that the bankrupt was clearly a good witness, ordered the original bill to be amended by striking out the name of the bankrupt whom the assignees desired to examine, and that being done, the assignees should be at liberty to examine the bankrupt as a witness in the suit. The Master of the Rolls thought that the regular course, and I cannot think the right to examine a witness depends upon the question whether he was a sole plaintiff, or whether there were others joined with him as co-plaintiffs. If, however, in this case, the plaintiffs were to amend the bill by striking out the name of the insolvent, there would then be no cause in existence. It has been said, indeed, by Mr. Bagshawe, that if the insolvent is not a party, a special application would not be necessary. If, however, I were at liberty to act upon my own opinion, I should not be deterred by that observation from making the order prayed at once. It is quite enough to show that a special application is necessary, inasmuch as no case has occurred in which the order has been made, although the case must be one of common occurrence. I think, therefore, that the proper course will be, not to make such an order as that which is asked, as, by doing so, I should be opposing the order of the Lord Chancellor, and that of the Master of the Rolls; but I strongly recommend an application to the Lord Chancellor, who, probably, may think it a fit case in which to make the order.

Motion refused, with costs.

#### Ecclequer.

*Vollans v. Fletcher*. Trinity Term, May 26, 1847.

RAILWAY COMPANY.—LETTER OF APPLICATION.—LETTER OF ALLOTMENT.—STAMP.

*A party applied by letter for shares in a projected railway company, and received in reply a letter, stating that ten had been allotted to him, and that he must pay the deposit into a banker's named by a certain day, or the committee might cancel the allotment: Held, that these letters were admissible in evidence without a stamp.*

ASSUMPSIT for money had and received for the plaintiff's use: Plea, *non assumpsit*.

At the trial before Pollock, C. B., it appeared that the action was brought on the authority of *Walstab v. Spottiswoode*, 15 M. & W. 501; against a managing director of a projected railway company, which was afterwards abandoned, to recover back the sum of 211, being the amount of a deposit paid by the plaintiff on

ten shares allotted to him. The plaintiff proposed to give in evidence the following letters.—

"To the Provisional Committee of the Birmingham, West Bromwich, Wednesbury, and Walsall Junction Railway.

"Gentlemen,—I request that you will allot me 30 shares of 20*l.* each, in the above-named company, and I hereby undertake to accept the same or any less number you may allot me, to pay the deposit of 2*l.* 2*s.* per share thereon, and to sign the parliamentary contract and subscribers' agreement when required.

"J. W. T. VOLLANS."

To that letter the following answer was sent,—

"Not transferable.

"Birmingham, West Bromwich, Wednesbury, and Walsall Junction Railway.

"Provisionally registered.

"Capital 200,000*l.* in 10,000 shares, of 20*l.* each. Deposit 2*l.* 2*s.* per share.

"Allotment, No. 348. Ten shares. Deposit 21*l.*

"Birmingham, 29th Oct. 1845.

"Sir,—We are directed to inform you that the committee of management have, in compliance with your application, allotted to you ten shares in this undertaking, and that the deposit of 2*l.* 2*s.* per share, amounting to the sum of 21*l.*, must be paid to one of the under-mentioned bankers, on or before Thursday the 6th day of Nov. next, who upon receipt thereof will sign the voucher at the foot of this letter.

"In default of payment of the above-named deposit by the day mentioned, the committee reserve the power of cancelling the allotment without notice.

"This letter, with the banker's receipt, must be exchanged for scrip certificates, which will be granted upon your executing the subscribers' agreement and parliamentary contract, without which no person will be recognized as a subscriber or be entitled to any interest in the undertaking.

"We are, Sir, your obedient servants,

"W. H. REECE, Solicitor.

"W. R. KETTLE, Sec. pro temp."

(Here followed the names of several bankers.)

It was objected, on behalf of the defendant, that the above letter amounted to an agreement, and should have been stamped accordingly.

The learned judge was of that opinion, and nonsuited the plaintiff, reserving leave to move to enter a verdict for him. A rule *nisi* having been granted,

Crowder and Ball showed cause. The letter of application and the letter of allotment were evidence of a contract between the company and the plaintiff, and therefore required an agreement stamp, under the 55 Geo. 3, c. 184, schedule title "agreement." There was a proposition on the part of the plaintiff to take an allotment of 30 shares, or any less number, and an agreement by the company to allot ten. The language of the 55 Geo. 3, c. 184, is similar to that of the old Stamp Act, 23 Geo. 3, c. 88, with respect to which Lord Kenyon, in the case of

*Robinson v. Drybrough*, 6 T. R. 317, says, that it was "thus particularly penned to obviate any objection which ingenuity might raise to creep out of it."

Martin, in support of the rule. The letter of application and the letter of allotment do not constitute the contract, which only arises upon the plaintiff's acceptance of the shares allotted. His letter contains a request for shares, to which the company reply by offering some upon certain terms, which must be complied with before there can be any valid contract between the parties. Until the payment of the deposit into the banker's, there is no evidence of the plaintiff's assent to accept the shares upon the conditions stated. A mere proposal in writing for a contract does not require a stamp, *Peninfold v. Hamilton*, 2 Stark. 475; *Edgar v. Bluk*, 1 Stark. 464; *Drant v. Brown*, 3 B & C. 665. In this case, if the plaintiff had refused to pay the deposit into the bank by the day named, it is clear that there would have been no contract. This clause of the Stamp Act was under consideration in *Vaughan v. Brine*, 1 Man. & G. 359, and *Beeching v. Westbrook*, 8 M. & W. 411.

Pollock, C. B. We are all of opinion that no stamp was requisite. The true test is this, was the plaintiff at liberty on receiving the letter of allotment to refuse to accept the shares on the terms mentioned. We think he was: and therefore the rule must be absolute to enter a verdict for the plaintiff.

Alderson, Rolfe and Platt, B.'s concurred.

Rule absolute.\*

#### Court of Review.

*Ex parte Hall, in re Carey.* July 5 & 21, 1847.

OFFICIAL ASSIGNEE.—OMISSION.—COSTS.

A proof of a debt having been made and a dividend declared, but the name of the creditor having been omitted in the dividend list, whereby the whole estate had been divided among the other creditors, the official assignee was held to be personally answerable for the amount of the proof to which the creditor would have been entitled had his name been included in the list, and for the costs.

THE fiat in this case was issued on the 4th of April, 1842, and creditors' and an official assignee were duly appointed, Mr. Belcher being the latter. The petitioner, James Hall, was a creditor, and proved for 353*l.* 14*s.* 2*d.*, and his affidavit of debts was filed with the proceedings. The official assignee delivered to the commissioner a list of the bankrupt's estate, the amount of debts and dividend, but omitting the name of the petitioner. The commissioner, acting on this, declared a dividend of 1*s.* 0*d.* in the pound. The solicitors to the fiat, upon this, made out the usual list for the official assignee to make out dividend warrants, and, on the solicitor of the petitioner applying for his warrant, he was told that his name did

\* See *Clarke v. Chaplin*, ante, p. 567.

not appear in the list and both the solicitor to the fiat and the official assignee declining all responsibility, the petition was presented, praying a declaration that Mr. Belfier had rendered himself liable for 184.108, the amount of dividend on 3531.14s. 2d. at 1s. 0d. in the pound, and also the costs of the application, and the costs, charges, and expenses incurred by the petitioner in endeavouring to obtain payment of the dividend.

The affidavit of the clerk to the official assignee stated that, according to the practice in bankruptcy, the solicitor to the estate ought to make out correct lists of the creditors, for which he is paid, and the official assignee has no means of knowing whether the list is correct, without referring to the original proceedings or his private memoranda. He also swore that the name of the petitioner had been purposely omitted, under the mistaken idea that the word "exd" inserted in the margin to denote that his proof had been exhibited meant that it had been expunged.

Mr. Bacon and Mr. Wiles, on behalf of the official assignee, called the attention of the court to the 1 & 2 W. 4, s. 22, appointing official assignees; and to the rules of November, 1842, which described in detail their duties. From these it was to be inferred that the official assignees were merely the official accountants in bankruptcy, and, as such, could not be justly held responsible for an omission such as that which had occurred in the present case.

Mr. Russell and Mr. Tillotson, on behalf of the petitioner, insisted that the official assignee was appointed exclusively for the purpose of protecting the funds, and distributing them properly, and that, as it was by his negligence the omission had occurred, he was the party really liable.

The Chief Judge asked the counsel for the official assignee, whether it was desired that the solicitor to the fiat should be served with this petition, so as to enable the court to decide whether such solicitor, if a party to the error, should share the responsibility?

The respondent's counsel, after taking time to consider the suggestion of the court, said their client was willing to leave that to the court, but they did not desire it.

The Chief Judge. The official assignee declines to ask that the matter should stand over for the service of the petition upon the solicitor to the fiat. The 24th clause of the Order of 12th November, 1842, points out the mode of making a dividend, and directs as follows:—That where a dividend has been, or may be, declared, the solicitor shall prepare lists and so on, and then "the official assignee shall examine and sign the several lists, if correct, and shall prepare books at the expense of the estate, containing as many blank warrants as may be necessary, according to the form given in the schedule, and shall number and fill up a warrant for each dividend, and insert in each warrant the name of the creditor, to which the number of each warrant is prefixed in the list,

and the dividend payable to him, and shall have the list specifying the securities in his custody, and shall take or send the books containing such warrants, together with the list, (not specifying the securities,) to the accountant in bankruptcy, who shall ascertain that the amount of such warrants does not exceed the sum standing in his name to the credit of the bankrupt's estate, &c., and shall return the warrants to the official assignee for delivery to the creditors."

I take it this could not be done without the lists being perfected in the presence of the official assignee. My impression is, that it is the duty of the official assignee not to sign the list without ascertaining that it is correct. That is my impression. I am very much confirmed in the view I take of the matter by Mr. Fonblanque, who concurs with me, who is so well acquainted with the practice and the whole course which this matter has taken. Therefore, the official assignee, not asking that the solicitor may be brought here either to take the whole burden, or to share it with him, I am afraid that I must charge the respondent. The petitioner can have only as much as he would have had, had his debt been included. The petitioner must have the dividend he would have had if this dividend had been calculated, and the respondent will recoup himself out of the estate which has come in or may come in. The petitioner's equity is only to have such amount as he would have had, if the debt had been included in the calculation. The next thing will be to make good to the assignee what he pays. There is not the slightest ground for the imputation of negligence. I make the order without the slightest imputation upon him. He is, I understand, an excellent officer. This is an unlucky slip, of which he may not have been the original author. There is no offensive imputation upon him. I am afraid the official assignee must pay the costs. I make this order with the greatest respect. Mr. Fonblanque is the highest possible testimony upon that subject, and he considers him to be an excellent officer. I do not know what order the court would have made if the solicitor had been brought here. I hope that in future official assignees will consider it their duty to ascertain that the lists agree. I have no doubt that there is not another official assignee, whether in town or country, who, under the same circumstances, would not have fallen into the same error. I trust, however, that now it will be well known that the court has put that construction upon the order; that the assignee must ascertain for himself that every creditor is included.

## ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

Common Law Courts.

PRACTICE.

AFFIDAVIT.

*Finds—A debt described in the writ of summons as "WIFE, Kilpin," ordered an ap-*



appearance. *William Wells Kilpin*, sued as *W. W. Kilpin*. An affidavit in support of a rule for judgment as in case of a nonsuit, entitled "*Edward Lomar, plaintiff, v. William Wells Kilpin, defendant*." Held, sufficient. *Lomar v. Kilpin*, 4 D. & L. 295, S. C. 16 M. & W. 94.

And see *Appearance*, 4; *Distringas*, 1; *Ejectment*, 5; *Executors*.

#### AMENDMENT.

1. *Copy of writ*.—A writ of *capias* and copy served were directed to the "sheriffs" of Middlesex, instead of "sheriff." The defendant in consequence applied to a judge at chambers to be discharged out of custody, which the judge refused, and ordered the writ and copy to be amended. On motion to rescind the judge's order: Held, that though the *capias* might be amended, the copy could not, and that the defendant was entitled to be discharged, inasmuch as he was not served with a true copy of the writ as amended. *Moore v. McGhan*, 4 D. & L. 267.

2. *Writ of summons*.—The court will amend alias and pluries writs of summons, by indorsing thereon the day of the date of the first writ of summons and of the return thereto, in order to save the Statute of Limitations, notwithstanding the 2 W. 4, c. 39, s. 10. *Culverwell v. Nugee*, 15 M. & W. 559.

3. *Writ of summons*.—*Statute of Limitations*.—The court will amend a writ of summons by inserting therein the character in which the plaintiffs sue, or the defendants are sued, if it appear that the debt would otherwise be barred by the Statute of Limitations. *Christie and another, assignees of Yeld, a bankrupt, v. Bell and another, public officers*, 34 L. O. 136.

And see *Arrest*, 2; *Ejectment*, 3.

#### APPEARANCE.

1. *Sec. stat. by plaintiff in person*.—Where a plaintiff sues in person, he may in person appear for the defendant, *sec. stat.*, although that case is not provided for in the forms given in the schedule to the 2nd section of the Uniformity of Process Act, 2 W. 4, c. 39. *Smith v. Wedderburne*, 16 M. & W. 104; S. C. 4 D. & L. 296.

2. *Sec. stat.*—Where, upon service of a writ of summons on a defendant, he denies that he is the party named therein, and the person serving the writ consequently omits to make the indorsement on the writ within the time required by Reg. Gen. M. T., 3 W. 4, r. 3, the court will, upon affidavit of these facts, permit him to make the indorsement, notwithstanding the lapse of the specified time, so as to enable the plaintiff to enter an appearance for the defendant according to the statute. *Burrows v. Gabriel*, 4 D. & L. 107.

3. *At what time to be entered*.—Where the 8th day after service of a writ of summons falls on any day between the Thursday next before, and the Wednesday next after, Easter-day, the last day for entering an appearance thereto is the Wednesday next after Easter-day, the rule of court of Easter Term, 2 W. 4, being over-

ridden by the stat. 2 W. 4, c. 39, s. 11. *Harris v. Robinson*, 2 C. B. 908.

4. *Return of nulla bona, &c., to a distringas*.—*Sufficiency of affidavit*.—The affidavit in support of a motion for leave to enter an appearance after the return of *nulla bona* and *non est inventus* to a writ of *distringas*, should show distinctly that everything had been done to find some goods of the defendant. *Pinney v. Richardson*, 34 L. O. 182.

#### ARREST.

1. *Judge's order*.—*Appeal to court*.—A party arrested by order of a judge may apply for his discharge either to the court or to another judge, and may, on such application, use affidavits to contradict or explain those on which the order was granted, and he may appeal to the court against the decision of such latter judge.

If the judge secondly applied to should differ from the first, or if it should appear on fresh affidavits that the person arrested was about to quit England at the time those affidavits were made, though he was not so when the order was made: *Quære*, whether in such cases the judge or court ought to discharge him.

An affidavit that deponent "has been informed and believes" that a party is about to quit England, is insufficient to warrant an order for arrest. Where an order to hold to bail has been improperly made by a judge, the court will not set aside the *capias*, but only discharge the defendant out of custody.

Where a defendant, against whom a *capias* has issued under a judge's order, applied to the court to have the money returned, on the ground that he was not about to quit the country, and the affidavits in answer were contradictory, the court referred the matter to the Master for inquiry. *Graham v. Sandrinelli*; *Talbot v. Bulkeley*, 4 D. & L. 317.

2. *Variance of writ and copy*.—*Amendment*.—Where, in a writ of *capias*, and in the copy thereof served on the defendant, it was directed to the sheriffs, instead of the sheriff of Middlesex: Held, that this was an irregularity; that though the court or a judge might amend the writ, they had no power over the copy; and that the defendant was entitled to his discharge, though the writ was amended, on the ground of the variance from it of the copy. *Moore v. Mangan*, 10 M. & W. 95.

3. *Plaintiff's death*.—*Ca. sa.*—A defendant arrested on a *ca. sa.*, is not entitled to be discharged out of custody by reason of the plaintiff's death, after the delivery of the writ to the sheriff, and before arrest. *Ellis v. Griffith*, 4 D. & L. 279.

Case cited in the judgment: *Cleve v. Vere*, Cro. Car. 457.

4. *Privilege*.—*Queen's servant*.—The "*Somerset Herald*" is a servant in ordinary of the Queen, with fee, and therefore privileged from arrest. *Dyer v. Dyer*. See *Execution*, 4;

Charging in execution. — Interim order.



Where a defendant was brought up in custody of a gaoler, for the purpose of being charged in execution, and it appeared that the commissioner of bankrupts had, on the preceding granted an interim order for his protection, court refused to allow him to be charged with execution. *Stoman v. Williams*, 4 D. & L. 49.

## COGNOVIT.

**Attestation.**—A cognovit was attested thus:—"Duly executed by the above-named R. G., in the presence of me, the undersigned S. B., attorney on behalf of the said R. G., expressly named by him, and attending at his request; and I do hereby declare that I subscribe my name as witness to the due execution hereof by the said R. G., and as his attorney; and that previous to the execution hereof by the said R. G. I informed him of the nature and effect hereof. S. B., Attorney, Birmingham." Held, sufficient. *Phillips v. Gibbs*, 4 D. & L. 275.

## COURT BARON.

**Constitution of.—Irregularity.—Waiver.**—An omission to state in the plaint, in a Court Baron, the nature of the action, is a mere irregularity, which may be waived.

In a suit in a Court Baron, the proceedings were alleged to have been taken at a court held "before A., the steward of the said court, a free suitor thereof, and B. and C. and others, free suitors of the said court." Held, that the court was properly constituted, it being alleged that A. was a free suitor.

Held, also, that A. was properly described as steward of the court, though it was not alleged that he was steward of the manor.

Held, also, that the court was properly described; and that it was sufficient to set forth the names of two only of the free suitors who attended. *Brown v. Gill*, 2 C. B. 861.

Cases cited in the judgment: *Jones v. Jones*, 5 M. & W. 523; *Chetwode v. Crew*, Willes, 614; *Bishop v. Kaye*, 3 B. & Ad. 605; *Rex v. Mein*, 4 T. R. 480.

## DEMURRER, STRIKING OUT.

On a rule for striking out a demurrer, under Reg. Gen. Hil. 4 W. 4, r. 2, the court set it aside, and struck out the pleadings connected with it, the defendant to pay plaintiff's costs of preparing for trial and attending to try the cause, and of the application to set aside the demurrer, and take short notice of trial, or judgment to be for plaintiff on the whole record. *Tucker v. Barnesley*, 16 M. & W. 54.

## DISTINGUAS.

1. **What affidavit must state.**—An affidavit for the purpose of obtaining a distringas to compel appearance must state an endeavour to serve the writ of summons at the defendant's residence, and must specify where the residence was. A distringas obtained on affidavits not describing the residence was set aside on motion.

The want of such description is not supplied by a statement that the copy of writ of summons was left with the defendant's brother, for

defendant, and that defendant afterwards told F. "he should unset plaintiff's for the writ" (not further describing it) "had been left with defendant's brother, and not with him." *Crofts v. Brown*, 7 Q. B. 284.

2. **Continuation of process.**—A writ of distringas may issue within a reasonable time after the expiration of a previous writ of summons. *Peyton v. Wood*, 4 D. & L. 19; S. C. 15 M. & W. 608.

## EJECTMENT.

1. **Service.**—On a motion for judgment against the casual ejector, where other than personal service is relied on, the affidavit should state in terms that the deponent "served the said A. B., the tenant in possession, by," &c., and then detail the facts which it is sought to substitute for personal service. *Doe d. Pigott v. Roe*, 4 D. & L. 88.

2. **Service.—Secretary of railway company.**—Personal service of a declaration in ejectment on the secretary of a railway company who are in possession of land sought to be recovered, is, under the 8 & 9 Vict. c. 16, s. 135, sufficient for a rule absolute for judgment against the casual ejector. *Doe d. Burgess v. Roe*, 4 D. & L. 311.

3. **Consent rules.—Adverse titles.—Amendment.**—Where two persons delivered separate consent rules in ejectment, each claiming to defend as landlord, the one for the whole of the premises claimed in the action, the other for a part of them, specifically named in the rule, under adverse titles, the court ordered the consent rules to be amended by confining them respectively to such parts of the premises as were really in the occupation of each party or his tenants. *Doe d. Lloyd v. Roe*, 15 M. & W. 431.

4. **Particulars.**—In an action of ejectment for alleged breaches of covenants contained in a lease, the defendant is entitled to particulars of the breaches of covenant on which the plaintiff relies. *Doe d. Moystyn v. Eyton*, 33 L. O. 527.

5. **Affidavit.**—On an application for judgment against the casual ejector where proceedings have been taken under 4 Geo. 4, c. 28, it does not render the affidavit irregular to state that a year's rent is due, if the affidavit also allege that there is no sufficient distress on the premises to satisfy half a year's rent. *Doe dem. Farmery v. Roe*, 34 L. O. 81.

## ERROR.

**Assignment in criminal case.**—The court, on motion and reasonable grounds shown by affidavit, permitted the plaintiff in error in a criminal case to assign errors without attending in person. *Murray v. The Queen*, 7 Q. B.

## EVIDENCE.

**Pleading.**—In an action of trespass against three defendants, where a verdict was found for the plaintiff against two of the defendants, court will not grant a rule for a new trial, the affidavit of the other defendant, stating that he is willing to give up the advantage of a

verdict in his favour, in order that certain facts might be given in evidence for the defence on a subsequent trial which were not admissible on the former trial by reason of an error committed in the pleadings. *Spencer v. Harrison and others*, 33 L. O. 284.

## EXECUTION.

1. *Speedy*.—A verdict having passed for the plaintiff at the trial of this cause, which took place in the vacation, the judge granted a certificate for immediate execution. The same day the plaintiff gave notice of taxation of his costs, and on the following day taxed them, signed judgment, and issued execution: *Held*, on motion to set aside the judgment and subsequent proceedings, that the plaintiff was regular in the course that he had pursued, and that he was not bound to take out a rule for judgment, or to wait four days before proceeding to sign judgment. *Alexander v. Williams*, 4 D. & L. 132.

2. *Arrest after death of judgment creditor*.—A writ of *cv. sa.*, issued in the life-time of the judgment creditor, may be executed after his death. *Ellis v. Griffith*, 16 M. & W. 106.

Cases cited in the judgment: *Cleve v. Veal*, Cro. Car. 159: *Thoroughgood's case*, Noy, 73.

3. *Married woman*.—Where an action is commenced against a *feme sole*, who marries during the pendency of it, and the plaintiff obtains judgment against her in her name when sole, and she is taken under a *ca sa.* sued out

upon such judgment, the court will not discharge her out of custody on the ground that she has no separate property. *Beynon v. Jones*, 15 M. & W. 566.

Case cited in the judgment: *Doyley v. White*, Cro. Jac. 323.

## EXECUTORS.

*Scire facias*.—*Judgment*.—Where executors move for judgment on the sheriff's return of "nil" to a writ of *scire facias*, the affidavit in support of the application must state that probate has been taken out. *Vogel and another, executors of Ann Vogel, v. Thompson*, 34 L. O. 232.

## FI. FA.

See *Salé*.

## HABEAS CORPUS.

*Accused party*.—*Coroner*.—Where a prisoner is committed for trial under a magistrate's warrant, on a charge of murder, *quare*, whether this court can grant a writ of *habeas corpus* to bring him before the coroner sitting upon the body of the deceased. *Semble*, per Coleridge, J., that they can. Such power will, at any rate, be exercised only where a case of necessity is shown. And this court refused the writ where the ground suggested was, that the party charged was to be identified before the coroner, and it was not shown that such identification could not be effected without producing the party. *In re Cook*, 7 Q. B. 653.

[To be concluded in the next number.]

## NISI PRIUS CAUSE LISTS.

## REMANETS FROM TRINITY TERM, 1847.

## Queen's Bench.

## Middlesex.

Sir R. Sydney	Cabill	S. J. Macdonald (stayed)	Dt. Bolton
Johnson, Son, and W.	Rowe	Cope (stayed)	Prom. Chester
S. B. Hamer	Davies	S. J. Wilkinson (stayed)	Prom. Howard
M. Fraser	Williams	S. J. Whiteway (inj.)	Prom. Mardon and P.
Adlington and Co.	Bastone and another, executrix, &c.	Ross (inj.)	Dt. Chadwick
Elderton and H	Fiddes	S. J. Wm. Toogood (inj.)	Prom. Campbell and A.
Johnson, Son, and W.	Crowther, admor., &c. (inj.)	Edwards and another, surviving executors	Dt. Williamson and H.
C. J. Jones	The Queen	S. J. Craufurd	Sci. fa. Wadeson
Becke	Becke	S. J. Parish and another	Dt. Helme and Johnson
Jno. Lewis	Moon (stayed)	Connop	Ca. Lewis
Thomas M. Parker	Clark (inj.)	S. J. Hughes	Pro. Rurall
Ablett	Neal (inj.)	Ward	Pro. Carlon and H.
Parson	Flower	S. J. Maskelyne	Kearsey and Co.
Craig and J.	Cowburn	S. J. Simpson and another	Sharpe and Co.
Gall and H.	Bretin	S. J. Buun	From. Lewis and L.
Thomas Foller	The Queen	S. J. The Justices of Devon	Hevor and B.
Blackford	The Queen	S. J. King	Indt. Richardson
Oliveron and Co.	Doord. Paucok	S. J. Frere	Eject. Vizard and Co.
Mackeson	The Queen	S. J. Cutler and others	Sci. fa. Chilton and Co.
Forest and Co.	Clutterbuck	Cartey, exor., &c.	Clarke and Co. I
Edwards and Co.	The Queen	S. J. William Richards	Pro. Bell
Salé	Salé	S. J. Gyllis	Indt. Boudillon and S.
Letts	Tod	S. J. Benthall	Indt. Sandys and P.
			Pro. Freeman and B.

Wentner	The Queen	Johnson and others	Tres. E. Lewis in person
Bridges and Co.	Knocker	S. J. Curling	E. Lewis deft's at-
Swan	Goodchild	Richard	Dt. In person [torney
C. Robson	George and another	S. J. Marquis Conyngham	Dt. Lewis
Weston	Gregory	S. J. McCulloch	Prima Benbow
Mawe	Gibbs	S. J. Johnson	Dt. Elmslie and P.
Pickering and Co.	Pickering	S. J. Burder	Pro. H. Phillips
C. Robson	Doe dem Jobbins	S. J. Meux and another	Ca. Bolton and Co.
Vickery	Milne	Great Western Rail. Co.	Ejt. Colley, Smith and Co.
John Bell	Hoare	S. J. Silverlock	Maples and Co.
Harbin and W.	Johnson	S. J. Wyld	Ca. Newbon and E.
Mortimer	Baylis	S. J. Vaughan	Pro. Sargent
W. Lane	Lane and others	Hooper, Esq., and another	Pro. Hastings
Vallance and B.	Galt	S. J. Raworth	Ca. Kilgour and P.
Parnell and T.	King, clk.	Alston, clk.	Pro. Leete
Strutt	Parratt	S. J. Blunt	Pro. Philipps and N.
Jos. King	Bidewell	Gudge	Pro. Elmslie and P.
Haynes	The Queen	S. J. Ivers and others	Dt. Stuart
Gray and B.	Doe ex. several dems. Pro-	Stiles	Norris
	thero and others	Ackers, Esq.	Tro. Eject. W. Smith
Geo. Hall	Winter	Angell	Dt. Abbott and Co.
Geo. Brown	Curlewis	Williams	Pro. In person
R. K. Lane	Smith and others	Sandford	Covt. Gregory and Co.
J. Benson	Hamilton	S. J. Grazebrook and another	Wilkinson
Wright and B.	Rogers	S. J. De Burgh	Tres. Rhodes and L.
Gell and H.	Collings	Meryweather	Pro. Keane
J. Aldridge	Banting	Pepper	Pro. Baker and Co.
Warneford	Duke of Brunswick and	Knill	Ca. Croker
	Luneburg	S. J. Scott and another	Pro. Brace
Temple	Nicholson	S. J. Coupland	Covt. Tyrrell
Stokes and Co.	The London and Black-	Smallbone	Ca. Walker and G.
	wall Rail. Co.	S. J. Pyne	Dt. Raven
John Bell	Hoare	Bell	Dt. Philp
Smith and Co.	Reynolds	Hodgson	Pro. Chester and Son
Archer	Lloyd, jun.	Manning	Dt. Beetholme
Groves, jun.	Groves, admor., &c.	Truefitt	Pro. In person
Scard	Wellsted	Blackhouse	Pro. King and A. [B.
S. J. and F. Lewis	Bradshaw and another	Franks	Tres. or Case Bucknell and
Richard Hunt	Smith & another exors. &c.	Oldfield	Tres. and Ejt. C. Robson
Lewis and L.	Townshend	North	Pro. Townshend
Dolman and S.	Doe dem Howerson	S. J. Macken	Ca. Nelson
W. Smith	Grainge	Crowl	Pro. Wright and Co.
Hall	Burrell (a pauper)	Gooch	Ca. Croker
Wm. Day	Dawson	Fisher	Tres. Hird and Son
Warneford	Duke of Brunswick and	Charlton and another	Tres. E. Clark
	Luneburg	Weiss	Pro. Weeks
Hodgson and B.	Oakley	Morrison	Pro. Whitcombe
L. Norton	Bingham, sen.	Hill	Pro. Hindman and H.
Abbott and Co.	Guest	Cullum	Dt. Rickards and W.
Thomas M. Parker	Clerk		Ejt. Jennings and Co.
Same	Same		
Finch and Co.	Cornish		
Wood and B.	Doe dem Rump & another		

## THE EDITOR'S LETTER BOX.

The *Legal Almanac, Year-Book, and Diary*, for 1848, is in a forward state. Any further information to be contained in it, should be sent immediately. The prospectus is now ready.

The services of H. T. H. will, we think, be deemed sufficient. The business he mentions seems not incompatible with that of a solicitor. The short interval once a week could not be objected to, and if it were, the intended extra service would simply make it up.

The observations on the Stamp Act from a Correspondent at Walsall are acceptable.

Several complaints have been received of the late or irregular delivery, and delay in the transmission by post, of *The Legal Observer*. Our readers will please to notice that a change has taken place in the publishing of the work. Orders should now be addressed to Messrs. A. Maxwell & Son, Law Booksellers and Publishers, 32, Ball Yard, Lincoln's Inn. The work is regularly published at 9 o'clock on Saturday mornings, and will be sent by that day's post.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, OCTOBER 30, 1847.

—“ Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

### OPERATION OF THE COUNTY COURTS ACT.

THOSE who have been vaunting of the successful operation of the County Courts Act appear to have been somewhat premature in their announcements. The act has not been long enough in force to have given it a fair trial under any circumstances, and the result, so far as the experiment has been tried, can scarcely be considered matter for unqualified congratulation. Indeed, when the evidences of success are inquired into, it will be found that they consist exclusively of a reference to the number of plaints entered and disposed of since the establishment of these courts. The new tribunals, say their admirers, number their suitors by tens of thousands, and are, therefore, eminently successful; and although many who argue thus have probably omitted to take into account the number of cases disposed of in the several Courts of Request, which were abolished and the jurisdiction transferred to the County Courts, it must be admitted that, in one sense at least, the conclusion founded on an estimate of the multitude of suitors is not altogether ill-founded. The income of the various officers connected with the County Courts has been heretofore derived from the payment of fees, and, of course, the multiplication of plaints proportionably increased the amount of their incomes. The adoption of this objectionable and long condemned system, in relation to the officers of the County Courts, has already created insatiable dissatisfaction. Statements, probably very much exaggerated, are current, as to the

ingenuity manifested in construing the schedules and rules so as to multiply the number of payments—the indisposition to relinquish the claim to a fee in any particular case—and the sordid spirit displayed generally by the officers of every grade. Whether the complaints arising from this source are well or ill founded, they have become loud enough to reach the government; and we understand her Majesty is about to issue an order, with the advice of her Privy Council, directing that fixed stipends shall in future be paid to the judges, clerks, and bailiffs of the County Courts, in lieu of fees. By this proceeding, it must be admitted, the new courts will be placed on a better and more satisfactory footing, and a scandal removed from the administration of justice.

The order for the substitution of fixed salaries instead of fees is authorized by the 39th section of the act, which provides,—“ That it shall be lawful for her Majesty, with the advice of her Privy Council, to order that the judges, clerks, bailiffs, and officers of the courts holden under this act, or any of them, shall be paid by salaries instead of fees, or in any manner other than is provided by this act.” And the following section provides,—“ That the greatest salaries to be received in any case by the judges and clerks of the courts holden under this act, shall be 1,200*l.* by a judge, and 600*l.* by a clerk, exclusive of all salaries to his clerks employed in the business of the courts, and other expenses incidental to his office:” with a proviso, that it shall be lawful for the Commissioners of her Majesty’s Treasury to allow such sum as they shall think

case deem reasonable to defray travelling expenses, with reference to the size and circumstances of the district." It will be observed that, although the maximum salaries of judges and clerks are limited to 1,200*l.* and 600*l.* per annum, respectively, there is no specification of the salary for the high bailiff, who, it is found in practice, has very onerous duties to perform, which frequently render it necessary for him to employ a number of assistants. We have not yet learned whether it is intended to pay the bailiffs, as well as the judges and clerks, by salary, nor have we heard whether it is proposed to pay the judges and clerks in every instance the maximum amount specified in the act. Considering, however, that the business of the courts imperatively requires the exclusive attention of those functionaries, the amount specified in the act can scarcely be deemed extravagant in any case, and by substituting those sums for the fees, the emoluments of both judges and clerks in many of the metropolitan and other populous districts will be reduced one half. The districts in which there is the smallest amount of business too, are, for the most part, those in which courts are holden at the greatest number of places, and in those districts there will necessarily be more time expended in travelling than in more populous localities. Perhaps, on the whole, it would not be either just or expedient to regulate the salaries of the judges or other officers by the amount of business transacted in each particular district. The view which her Majesty's advisers take on this point will be best understood when the order is published. It may be regarded as a fortunate incident that the advisers of the Crown are enabled to effect an alteration of this nature without legislative assistance. There are other amendments, however, equally important and necessary, which can only be effected through the instrumentality of another act of parliament.

In a recent number (*ante*, p. 521,) we quoted a leading article from the *Times*, founded on a police case, from which it appeared that a poor servant girl had been defrauded of half-a-crown by one of the harpies who swarm about the new courts under the name of agents, upon pretence of assisting her to fill up a plaint for the recovery of a small sum due to her for wages. It is stated, and we believe correctly, that "the clerks refuse to fill up plaints, and declare they would be liable to a penalty for so doing." The liability to a

penalty, we presume, is supposed to arise under the 30th section of the act, which provides, that if the clerk or his partner shall act as treasurer, or high bailiff, or as attorney for any party in the court, he shall be liable to a penalty of 50*l.* Now, whatever may have been the intentions of the legislature as to the employment of legal advisers in the new courts, we are by no means certain that the superior courts of law would hold, that a person filling up plaints for suitors in the County Courts did not act as an attorney for those suitors, and therefore the apprehensions of the County Court clerks—even were they to fill up plaints gratuitously—may not be quite so absurd as it is supposed. We fully concur in the conclusion to which the writer in the *Times* has come, that "a County Court professing to administer justice without professional intervention is a mere delusion, unless it contains within itself, not only the means of cheaply and rapidly determining plaints, but of assisting suitors in taking the proceedings that may be required." If it were practicable, however, we can conceive no system more objectionable than that of the public providing legal assistance and advice for suitors. It would require a large army of paid lawyers, the estimate for whose salaries, we fear, would not form the most popular item in the Chancellor of the Exchequer's budget. Every person conversant with the practice of an attorney knows, what lengthened communications it is often necessary to have, even with intelligent and educated clients, before the nature and particulars of their claims can be obtained with sufficient accuracy to justify the first step in an action—the issuing of a writ of summons. The analogous proceeding in the County Courts requires, at least, as much preliminary investigation. The 59th section of the act provides, that the plaint shall be entered *stating the substance of the action*, and thereupon the summons, *stating the substance of the action*, shall be issued under the seal of the court; whilst the rules of practice for carrying out the act direct, that where the claim exceeds 5*l.*, the plaintiff shall deliver certain copies of the *statement of the particulars of the demand* or cause of action, one copy of which is to be annexed to the summons. A person undertaking to fill up the plaint and particulars of demand correctly, must, therefore, be fully possessed of the nature of the plaintiff's claim, as well as of the precise items of which it is composed.

This can only be obtained by a personal communication with the plaintiff, or some one equally well informed as to the facts; and in a court where several hundred plaints are entered in a week, it may be conceived how large a staff of officers would be requisite to conduct this preliminary investigation; the time of the officer, be it remembered, being at the command of the suitors, a proportion of whom, it is not unreasonable to suppose, may be stupid and wrongheaded. It is not in the preliminary proceedings alone, however, that the suitor requires assistance. A suitor—like the maid-servant whose case properly and profitably excited our contemporary's attention—unacquainted with the law, the practice, and the forms of proceeding, would require advice and assistance at every stage, and if these were given gratuitously at the public expense, they might and would be claimed by every suitor. The evil would be cruelly aggravated by the remedy suggested. It is not to the officers of the court the suitors must look for assistance, but to professional advisers selected freely, and remunerated reasonably with reference to the time and attention expended on the causes entrusted to them. Whether the remuneration should come wholly from the pockets of the unsuccessful suitor we shall not stop now to discuss. It is quite obvious that the inadequacy of the fees now allowed to practitioners in the County Courts operates, in the great majority of cases, as a prohibition against the employment of professional assistance, and not only impedes the useful working of the act, but, to repeat the forcible language of the *Times*, renders the administration of justice in the County Courts "a mere delusion."

When this matter comes to be considered by those whose province it is to superintend the administration of justice, as we trust it may be before the next session of parliament, there is another branch of the subject which must not be allowed to escape attention. The avowed intention of the legislature was, that the County Courts should not have jurisdiction in any case where the subject-matter in dispute exceeded 20*l*. The act has received a construction, however, which enables a plaintiff claiming more than 20*l*. to divide his claim into separate parts, and bring distinct suits for the recovery of each part. The 63rd section of the act, (9 & 10 Vict. c. 95,) it is true, prohibits the division of "a cause of action" for the purpose of mul-

tiplying plaints, but the new judges have decided,\* that the cause of action is the contract, and that in the common case of a shopkeeper and his customer, every order and delivery of goods constitutes a distinct cause of action, for which the tradesman, if he think fit, might enter a separate plaint. In fact, therefore, claims to any amount may be recovered in the new courts, only taking care that the contract sought to be enforced by each particular plaint does not exceed 20*l*. Be this right or wrong, if it is to continue, is it not quite monstrous that a jurisdiction so extensive and important should exist without any power of appeal? The most able and experienced of the judges of the superior courts, sitting at chambers or at *nisi prius*, constantly fall into judicial errors, which are remedied upon an application to the court sitting in banco. As we have repeatedly had occasion to observe, a considerable proportion of each Term is occupied in the common law courts in entertaining and discussing applications of this nature. It is not to disparage the judges of the County Courts to say that they are not infallible any more than other judges, and it is quite plain that, acting independently of each other as they do, and having no opportunities for consultation or the interchange of opinion upon points of difficulty as they arise, there can be no approach to uniformity of decision amongst this numerous body of judges, unless an appellate jurisdiction be established. That it will come to this may be pretty safely predicted. It is to be hoped the alteration will not be delayed until the administration of justice in the new courts becomes a bye-word.

## LAW OF LANDLORD AND TENANT.

### DETERMINATION OF YEARLY TENANCY.

THE question whether a tenancy from year to year can be legally determined by a notice to quit expiring at the end of the first year, or whether it enures for two years certain, is one on which great difference of opinion has long prevailed. The point has been expressly decided by the Court of Queen's Bench, in a case very

\* Upon the authority of *Kitchen v. Campbell*, 3 Wils. 308; 2 Blac. 827; *Seddon v. Tatop*, 6 T. R. 607; *Lord Bagot v. Williams*, 3 Barn. & Cres. 235; and *The King v. The Sheriff of Hertfordshire*, 1 Barn. & Adol. 672.

recently reported,<sup>5</sup> and the judgment intimates that it was not unknown to the court that its decision might appear to be at variance with an impression which had previously prevailed in Westminster Hall, and which, perhaps, derived some countenance from an opinion supposed to be entertained by the late Lord Tenterden.

The facts upon which the judgment of the Court of Queen's Bench was founded were shortly as follow:—The defendant (Smaridge) held a house and land under an agreement with the lessor of the plaintiff, (Clarke,) for a term which expired at Lady-day, 1842. After that day, Smaridge continued to hold without any express agreement, and paid the accustomed rent due at Midsummer, which was accepted by Clarke. Before Michaelmas, 1842, Clarke gave the defendant notice to quit at Lady-day, 1843, and the defendant refusing to quit pursuant to this notice, an action of ejectment was brought.

On the part of the defendant, it was contended, that a new tenancy from year to year commenced after Lady-day, 1842, and that such a tenancy must necessarily be for two years certain; and in support of this view several cases were cited, which were afterwards disposed of in the judgment of the court, upon the ground that in all those cases it appeared either by the pleadings or the evidence, that there was an express contract, preventing the legal determination of the tenancy at the end of the first year. The case of *Bishop v. Howard*<sup>6</sup> was especially relied upon, in which Lord Tenterden appears to have differed from, although he deferred to, the opinion of the other judges of the Court of Queen's Bench.

The court, in noticing the case of *Bishop v. Howard*, observed, that it did not touch the question when a yearly tenancy may be determined, but only went to show that by holding over and subsequent payment of rent as rent, a tenancy from year to year is created. Upon the principal point the court, after deliberation, laid it down as a rule of law, that "a tenancy from year to year is determinable by either party at the end of any year, by giving notice to quit half a year before the end of the year." There is no reason, it was said, why the tenancy should not be determined at the end of the first year as well as the end of any subsequent year, unless the parties

have by express contract prevented such determination, as in various cases cited. Upon an examination of all the authorities, the court declared, that "it would be absurd in principle, and inconsistent with the nature of the contract, to hold that a tenancy exists from year to year, determinable by a half year's notice by either party, and yet to hold that neither can give such notice during the first year." Upon these grounds, judgment was entered for the lessor of the plaintiff in the action of ejectment.

## PUBLIC INTERFERENCE WITH JUDICIAL DECISIONS.

NOT satisfied with the power of taking the law into their own hands by acting professionally for themselves, there is a portion of the public that would seem disposed to interfere with the office of the judges. In a case of recent occurrence at the Westminster County Court, a decision which we believe to be as strictly legal as we are sure it was perfectly conscientious, has aroused the ire of some individuals who have got up a public meeting to call the judge to account for the course he thought proper to follow. We are not surprised that parties whom the legislature has flattered into the belief that they are fit to be their own professional advisers or advocates, should carry their ambition so far as to imagine that they ought to be their own judges.

It is in the natural course of things that the public should fail in respect towards a tribunal which the legislature has taken care to deprive as far as possible of all dignity; for even the administration of justice enjoys no exception from the rule that what is the subject of too much familiarity must become contemptible. We must, however, protest, at the outset, against the incipient disposition manifested to appeal to the mob of a public meeting against the decision of one of the County Court Judges. Those suitors most distinguished for their busy and meddling propensities may be always keeping up an indecent agitation on the subject of a legal judgment by which one of the parties must necessarily be dissatisfied. We do not say that the practice of establishing a sort of appellat jurisdiction at taverns or other places of public resort would have any corrupting or intimidating influence upon the gentlemen acting as judges of

<sup>5</sup> *Doe dem. Clarke v. Smaridge*, 7 Queen's Bench Rep. p. 957.

<sup>6</sup> 2 Barn. & Cres. 100.



the County Courts, but such a deplorable result would be possible, if the principle lately acted upon by the Westminster magistrates were not to be resisted. Those who administer the law have a right to be protected against impertinence which they cannot, consistently with their own dignity, either answer or take notice of. It has been long the boast of this country that the judges are made independent of the Crown itself, and surely, if they may not be taken to task by her Majesty the Queen, they ought *a fortiori* to be preserved from the dictation of his sometimes unreasonable majesty the People.

Questioned, as it is, in a manner we wholly disapprove, we have not thought it necessary to enter at all into the consideration of Mr. *Moylan's* law, which has given offence to those, some of whom—as he owed his present appointment to their suffrages—must, we suppose, be called his constituents. The danger and folly of making the office of judge elective, as it was by the act under which Mr. *Moylan* was originally placed on the judicial bench, might have been very awkwardly illustrated in this case, had a gentleman of less firmness occupied Mr. *Moylan's* present position. We think him perfectly right in declining to compromise the dignity of the office he holds by tendering any explanations to a self-constituted court of appeal, of whose incompetence and want of jurisdiction he must be thoroughly satisfied. Had there been any reasonable grounds for believing that he had acted either partially or illegally, there are proper means for representing his conduct in the quarter qualified to deal with it; but the attempt to get up an excitement against him, through the medium of a public meeting, is so obviously indecent, that we cannot help suspecting motives of private malignity. The Lord Chancellor and the Secretary of State have, it is said, received communications from Mr. *Moylan's* assailants; but we are sure these high officers of state will support the judge of the Westminster County Court in a firm discharge of what he has reason for believing to be his duty. It is, at all events, most unfair to endeavour to damage him in general estimation at a public meeting, where an accurate estimate of all the circumstances could not be formed, unless attention was drawn to all the proceedings and the whole of the evidence upon which his impugned decision was founded.

## NOTICES OF NEW BOOKS.

*A Selection of Leading Cases on Pleading and Parties to Actions, with Practical Notes.* By W. FINLASON, Esq., of the Middle Temple, Special Pleader. London: Stevens and Norton, 1847. pp. 271.

THIS work is designed to elucidate the principles of pleading as exemplified in cases of most frequent occurrence in practice. Mr. Finlason observes that—

“It is unnecessary to point out the advantages incident to the plan upon which these pages have been composed; advantages, so well illustrated in the *Leading Cases* of the late Mr. Smith. It was conceived that such a plan (affording at once the best means of elucidating principles, and of illustrating their practical operation,) would be especially applicable with respect to *pleadings* in which the principles and the practice are peculiarly associated, and in which a work on such a plan appeared likely to be of some use both to the student and the practitioner.”

The author, in illustrating the system of pleading, has referred not only to the new rules and the decisions thereon, but to the earliest authorities on the subject. For this purpose he has resorted to the older reports and Year Books. He says,

“It was deemed proper to confine this selection of cases to subjects of *most common occurrence in practice*; such as the nature and application of the action on an account stated, for money had and received, for use and occupation, and of debt for rent, together with the mode of pleading the usual defences in the latter actions, and in actions on bills of exchange—the form of pleading certain defences partaking of the nature of accord, &c.

“As it may appear that the notes extend to a length not, in every instance, exactly proportioned to the intrinsic importance of the cases illustrated, it may be observed that this has arisen not only on account of the reason already referred to, but from an anxiety to elucidate thoroughly the principles involved, and to render the notes as complete as possible, by applying those principles to every practical question likely to arise.”

Mr. Finlason has also treated of that large amount of litigation which has arisen on the liability of Provisional Committee-men and the perplexing problem in that difficult department of pleading—the *parties to actions*.

The “leading cases” selected by the author are the following:—

*Egles v. Vale*, 3 Croke, 69.

*Pegcock v. Rhodes*, Doug., 632.

*Chamberlyn v. Delarive*, 2 Wils., 343.

*Kearlake v. Morgan*, 5 T. R., 513.  
*Agard v. King*, Cro. Eliz. 775.  
*Woods v. Duke of Argyll*, 8 Jur. 62.  
*Lake v. Same*, 9 Jur. 295.

The notes are able and copious.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### JOINT STOCK COMPANIES.

10 & 11 VICT. c. 78.

An Act to amend an Act for the Registration, Incorporation, and Regulation of Joint Stock Companies. [22d July, 1847.]

By the 7 & 8 Vict. c. 110, it is enacted, that on the complete registration of any company being certified in the manner prescribed in the said act it shall be lawful for such company, amongst other things, to purchase and hold lands, tenements, and hereditaments in the name of such company, or of the trustees or trustee thereof, for the purpose of occupying the same as a place or places of business of the said company, and also (but nevertheless with a licence, general or special, for that purpose, to be granted by the committee of privy council for Trade, first had and obtained,) such other lands, tenements, and hereditaments as the nature of the business of the company may require: And whereas doubts have in certain cases arisen as to the meaning of the said provision, and it is expedient that such doubts should be removed, and that further provision should be made as to the granting of such licences as aforesaid by the said committee of privy council: Be it therefore enacted—

1. That any company, having obtained certificate of complete registration, being desirous of holding lands, may apply to the Board of Trade for a licence, who may, if they see fit, grant the same.

2. That accounts of licences, renewals, extensions, &c., be annually laid before Parliament.

3. That licences granted before the passing of this act be deemed valid and effectual for the purposes therein expressed.

4. That so much of recited act as requires the return to the office for registration of joint-stock companies of a copy of every prospectus, &c., be repealed.

5. That in addition to the particulars which the promoters of every such company as aforesaid are by the said act required to return to the said office for the registration of joint-stock companies, when and as from time to time they shall be decided on, such promoters shall also return, and they are hereby required to return, to the said office, the following additional particulars, so soon as the same shall be decided on; (that is to say,)

First. The amount of the proposed capital of the company:

Second. The amount and number of the

shares into which the same is to be divided:

And if the said company be dissolved, or be incorporated by act of parliament, or by royal charter or by the Queen's letters patent, or be in any way withdrawn or supposed to be withdrawn from the operation of the said act, the promoters of the company shall forthwith give notice thereof to the registrar of joint-stock companies.

6. If any alterations are made in particulars registered, they shall be returned within a month to the registrar, under a penalty of 20*l*.

7. That it shall not be lawful for the promoters of any company, or for any person connected with any company, at any time before such company has obtained a certificate of complete registration under the said recited act, to issue or publish or in any manner address or cause or suffer to be addressed to the public, or to the subscribers or others, any prospectus or circular, handbill or advertisement, or other such document relative to the formation or modification of the company, containing any statement at variance with the particulars which may have been returned to the registrar of joint-stock companies under the said recited act or this act, nor to issue, publish, or in any manner address or cause or suffer to be addressed to the public, or to the subscribers or others, any such prospectus, circular, handbill, or advertisement, containing any statements of particulars which are by the said recited act or by this act directed to be returned to the registrar of joint-stock companies, until such particulars have been so returned; and if any prospectus or circular, handbill or advertisement, be issued, published, or addressed to the public, or to the subscribers or others, contrary hereto, any promoter of the company shall be liable for each and every such issue or publication to forfeit any sum not exceeding 20*l*.

8. Penalties under this act to be sued for as under recited act.

## INJUSTICE AND IMPOLICY OF CONVEYANCING STAMPS.

*To the Editor of the Legal Observer.*

WE have several law societies (metropolitan and provincial) expending their energies in attempting to effect reforms in our civil and criminal jurisprudence, and that with regard to "*grievances*" which are very difficult of remedy, inasmuch as they are the almost natural products of extremely artificial agencies employed in the maintaining a highly artificial state of society.

The attention of these societies should be directed to one grievance of considerable magnitude, affording a wide margin for alteration, and to which, under a vigorous effort, there is good hope that they will be successful. I allude to the *Stamp Act*, 55 Geo. 3, c. 184. "*Monstrum horrendum*," and of which we may truly say, "*lumen ademptum*." To say no-

thing of the negative badness of this law, and the difficulty of its interpretation, take an instance of its positive injustice. I am "concerned" for a party, suffering under the present very general epidemic,—shortness of cash. Three years since he mortgaged certain copyhold premises to secure £220; the mortgagee died; his executors want to divide the estate, and my client is now called upon to pay off the incumbrance. To do this, he is compelled to effect a transfer; and, in order to cover the expenses of the new transaction, and an arrear of interest, to borrow the further sum of £60, and charge new premises. Now just look at the table of fees, under 55 Geo. 3, aforesaid,—

	£	s.	d.
Special deed of covenant to surrender and for title . . . . .	1	15	0
(A follower, with difficulty avoided)			
Admission of the trustees of the legal estate . . . . .	1	0	0
Surrender by them and executors, and further charge, and further security (£60), 30s., 35s. . . . .	3	5	0
One follower stamp . . . . .	1	5	0
Admission of the new mortgagee . . . . .	1	0	0
	£8	5	0

or nearly 15 per cent. on the further amount borrowed! this £8 5s. 0d. (to say nothing of the sheep-skin) he has paid. Now add the solicitor's costs to the Chancellor of the Exchequer's; then tell your client, that when his six months' covenant becomes due, the same thing may again occur. I have known scores of small transactions like this one, in which the solicitor's fees have been voluntarily reduced nearly one-half, and that principally on account of the excessive amount of stamps. The Chancellor of the Exchequer may depend upon it that it is a triangular evil, and also "robs him the exchequer;" for if excessive punishments amount to an abrogation of the enactment which inflicts them, so these excessive stamp duties have the like effect, by stifling transactions which would otherwise bring money into the treasury.

Walsall, October 19.

J. P.

## LECTURES AT GRAY'S INN.

### REAL PROPERTY AND CONVEYANCING.

THE Lecturer on the Law of Real Property and Conveyancing will deliver his introductory lecture in Gray's Inn Hall on Thursday, the 4th of November, 1847, at half-past 7, and will continue the course of lectures, exercises, and examinations on every Monday and Thursday until, and inclusive of, Thursday, the 23rd of December next, at the same hour.

In some manors payable on each separate set of parcels.

## ADVOCACY OF ATTORNEYS IN THE INSOLVENT DEBTORS' COURT.

REFERRING to an article in our last number, p. 577, *ante*, relating to the recent change in the law by which the insolvency business under Lord Brougham's act has been transferred from the Bankruptcy to the Insolvent Debtors' Court, we have to notice the claim which we expected would be made on the part of the attorneys to be heard in those cases in which they have been accustomed to appear before the bankruptcy commissioners, now transferred to the insolvency commissioners.

In the matter of *Mewburn*, an insolvent, Mr. Lewis, the solicitor, appeared to oppose the application.

Mr. Commissioner Harris declined to hear him, observing that his learned brethren and himself had decided that no attorney could be allowed to act as an advocate in that court.

Mr. Lewis, without commenting upon the decision of the court, begged to observe that he had offered a brief to counsel, who declined accepting it in consequence of the fee which they had fixed upon as their own rate of remuneration not being marked upon it.

The Court observed that it had nothing whatever to do with the arrangements of counsel, and refused to listen to Mr. Lewis.

Another question then arose. The amount of the insolvent's debts was £467; but sets-off reduced it to below £300. The commissioner doubted whether the sets-off could be allowed any assessment in the amount of debt. The case was therefore adjourned to the 26th instant, when the matter will be argued by counsel.

We understand that the gentlemen of the bar, practising in this court, have arranged that the usual fee of two guineas should in the cases in question be reduced to one guinea.

## ANNUAL REGISTRATION OF ATTORNEYS.

WE have to remind the London agents that it will facilitate the discharge of the duty of the annual registration if they will now send in the declarations of their clients, and also their own. The examination of many thousand names will of course require a considerable period of time. The certificates are, to a certain extent, already filled up, but cannot be completed till the declarations have been actually left.

An alphabetical list should accompany the declarations.

**MICHAELMAS TERM EXAMINATION  
OF ATTORNEYS.**

The Examiners appointed for the examination of persons applying to be admitted attorneys, have fixed Tuesday, the 16th day of Nov. next, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, to take the examination.

The articles of clerkship and assignment, if any, with answers to the questions as to due service, according to the regulations approved by the judges, must be left with the secretary, on or before Tuesday the 9th Nov.

Where the articles have not expired, but will expire during the term, the candidate may be examined conditionally, but the articles must be left within the first seven days of term, and answers up to that time.

A paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Courts. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each candidate is required to answer *all* the Preliminary Questions (No. 1.); and it is expected that he should answer in *three* or more of the other heads of inquiry,—*Common Law and Equity* being two thereof.

The number of candidates who have given notice of *admission* for next term, including those who have obtained leave to add their names, is . . . . . 200

Of these, 41 have been already examined 41

The number remaining to be examined 159

But this will probably be largely reduced from various causes.

**THE LEGAL OBSERVER EDITION  
OF THE  
STATUTES OF THE LAST SESSION.**

THE 26 Statutes effecting Alterations in the Law passed during the last Session, which have been printed verbatim in the present volume of the *Legal Observer* are as follow:—

	Page.
Drainage of Land, 10 Vict. c. 11 . . . . .	94
Inclosure of Commons, 10 Vict. c. 25 . . . . .	120
Removal of Poor, 10 & 11 Vict. c. 33 . . . . .	313
Abolition of Mastership in Chancery, c. 60 . . . . .	236
Threatening Letters, c. 66 . . . . .	286
Custody of Offenders, c. 67 . . . . .	287
House of Commons Costs Taxation, c. 69 . . . . .	339
Juvenile Offenders, c. 82, . . . . .	392

Securing Trust Funds and relief of Trustees, c. 96 . . . . .	285
Chancery Affidavit Office, c. 97 . . . . .	337
Bankruptcy and Insolvency, c. 102 . . . . .	310
Tithes Amendment, c. 104 . . . . .	366
Removal of Poor, c. 110 . . . . .	414
Copyhold Commission Continuance, c. 101 . . . . .	437
Rating Stock in Trade Exemption Continuance, c. 77 . . . . .	437
Administration of Poor Laws, c. 109 . . . . .	483
Colonial Copyright, c. 95, . . . . .	456
City of London Small Debts Court, c. lxxi. (Local) . . . . .	471
Highway Rates, c. 93 . . . . .	499
Turnpike Acts Continuance, c. 105 . . . . .	500
Canal Carriers, c. 94 . . . . .	522
Ecclesiastical Jurisdiction, c. 98 . . . . .	540
Commons Inclosure Amendment, c. 111 . . . . .	560
Marriages of Quakers and Jews, c. 58 . . . . .	562
Carriage of Passengers by Sea, c. 103 . . . . .	581
Joint Stock Companies, c. 78 . . . . .	610

**RECENT DECISIONS IN THE SUPERIOR COURTS.**

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

**Lord Chancellor.**

*Varty v. Duncan.* August 3 & 4, 1847.

**MISTAKE.—TAKING ISSUE PRO CONFESSO.**

*Where defendant had obtained an order that the plaintiff should proceed to trial of an issue by a certain time, or that in default the issue should be taken pro confesso as against the plaintiff, and the plaintiff omitted, through mistake, to give notice in time of the trial, an order to take the issue pro confesso was refused, and an extension of the time for trying the issue was granted to the plaintiff.*

THE proceedings on the motion in this behalf before the Vice-Chancellor of England are reported *ante*, p. 407.

Mr. Cooper, with whom were Mr. Walker and Mr. Emsley, now moved for leave, which had been refused by his Honour, to make absolute an unsuccessful order obtained by the defendant on the 9th of February, 1847, to the effect that an issue, directed to be tried forthwith by an order of the 4th of November, 1846, might be taken, *pro confesso*, in favour of the defendant if the plaintiffs should not proceed to the trial at the Middlesex sittings after Trinity Term then next. The last-mentioned order was for a new trial of an issue which had been originally directed to be tried by an order of the 13th of December, 1844. Notice to proceed with such new trial forthwith having been served by the defendant upon the plaintiff, and the latter not having

so proceeded, the defendant obtained the order which he now sought to make absolute. The Vice-Chancellor had refused this motion upon the grounds that the common law clerk of the plaintiff's solicitor had made a slip in the practice by not giving notice of trial in time, alleging that he was unaware of the order lastly obtained by the defendant, and upon the grounds that the plaintiff had used every endeavour to rectify the mistake by immediately applying to a judge at chambers for leave to enter the issue *nunc pro tunc*, which could not be obtained in consequence of the defendant's refusal to consent, notwithstanding the plaintiff's offer to defray all expenses. They cited the case of *Cashorne v. Barsham*, 5 Myl. & Cr. 113, the principle of which was recognised by the Master of the Rolls in the case of *Hargrave v. Hargrave*, 8 Beav. 289. Subsequently to the Vice-Chancellor's refusal of the defendant's motion, his Honour had granted liberty to the plaintiff to proceed to a new trial of the said issue at the sittings after Michaelmas Term next.

The Lord Chancellor, without hearing Mr. Bethell and Mr. Schomberg, who appeared for the plaintiff, said, that the present case was very much opposed to that of *Cusborne v. Barsham* (*supra*), where it was evident the plaintiff did not intend to go to trial. Here the plaintiff was anxious to proceed, and the defendant wished to take advantage of a slip. Now the court would always relieve where such slip could be satisfactorily accounted for. Undoubtedly there had been here great ignorance or negligence, but as soon as the error was discovered, every step was taken to remedy it. The motion must be refused with costs.

#### Rolls Court.

*Hawks v. Howard.* July 22 & 23, 1847.

#### BREACH OF TRUST.—ANSWER TO DEFENDANT.—INQUIRY.

*The answer of a trustee, who had handed over a trust fund to a co-defendant in the suit, by whom it had been applied to discharge liabilities of the trustee to himself, is not admissible for the purpose of raising a case for inquiry as to whether the co-defendant had not notice of the trust.*

THIS was a suit to recover a trust fund under the following circumstances. The fund originally consisted of a promissory note dated the 16th of August, 1838, and payable four years after date. The trustees were Mr. Knightly, a clergyman resident in Warwickshire, and Mr. Howard, a solicitor, practising at Cheltenham. Shortly before the time when the note became payable, an intention was formed of changing the trustees; but as the change had not been completed at the time when the note became due, it was determined that the money should be received by the old trustees, and by them paid over to the new

ones. For this purpose a bill for £4,000, drawn on Messrs. Barclay and Co. in London, and payable seven days after sight, was transmitted on the 6th of August, 1842, to Mr. Knightly, by whom it was indorsed and forwarded to Mr. Howard, with directions also to indorse it and forward it to Messrs. Barclay and Co. in London. Mr. Howard received the bill on the 16th of August, and on the same day gave it to a Mr. Ridler, the managing officer of the Cheltenham and Gloucester Banking Company. The bill became due on the 23rd, and the proceeds were then carried to the private account of Mr. Howard. On the 29th Mr. Howard and Mr. Knightly sent an order to Mr. Ridler to invest the proceeds of the bill in the names of the new trustees. At the time when the bill was originally given by Howard to Ridler, Howard had a credit given him by the bank for upwards of £1,500; but this credit rested upon a bill accepted by Howard; in the interval between the 16th and 29th, bills to the amount of £700, accepted also by Mr. Howard, were dishonoured, and there were at that time known to be bills to a considerable amount accepted by Howard and soon to become due. Under these circumstances, suspicion as to Mr. Howard's solvency was aroused at the bank, and Mr. Ridler replied to the order of Messrs. Knightly and Howard, that he could not allow Mr. Howard to draw out the proceeds of the bill until the overdue bills were paid. Mr. Howard subsequently proved unable to meet his liabilities to the bank. The present bill was filed by the new trustees to recover the amount against Mr. Howard, and the bank, whom it was sought to make responsible for the proceeds, upon the ground that Mr. Ridler, at the time when the bill was given to him, knew that it was trust property. Mr. Ridler positively denied the knowledge thus imputed to him. He admitted, however, the following circumstances, which it was contended raised a sufficiently suspicious case against him to justify inquiry. These circumstances were:—That Howard had asked Ridler to take charge of the bill for him; that he knew Knightly to be a clergyman, and therefore that it was unlikely that a bill which required to be indorsed by him and Mr. Howard should be Mr. Howard's own money, and that he had afterwards said that a great deal of the money in the hands of attorneys was the money of other people, not their own.

Mr. Howard, by his answer, stated that he had distinctly communicated the fact of the bill being trust property to Mr. Ridler at the time of giving up the bill to him, and that it was carried to his account at the advice of Mr. Ridler, and only to prevent the inconvenience of having to get Mr. Knightly's order for the subsequent investment of its proceeds, which was so soon to take place. Mr. Howard could not be examined as a witness in the case, because the right of the plaintiff against the bank depended upon his remedy over against Mr. Howard, who was therefore an independ-

sable party to the suit. But the plaintiffs urged that the contradiction of the two answers was a sufficient reason for the court to direct an issue to try the fact of whether or not the bank had notice of the trust at the time when the note was deposited.

Mr. Turner and Mr. Godeve for the plaintiffs.

Mr. Kindersley and Mr. Smyth for Mr. Howard.

Mr. Roupell and Mr. Heathfield for the bank.

Lord Langdale, after stating the facts of the case, said that the plaintiff was under great difficulty in establishing his case against the bank; the answer of Mr. Howard had been drawn to his notice, but that answer could not be read against a co-defendant. There were indeed cases where the answer of one defendant might have an effect against another; but it could not be read as evidence against him. The defendants, therefore, were obliged to resort to the answer of Ridler, and though they seemed to admit that they could not succeed on Ridler's answer alone, said that Ridler's answer disclosed such a case, as with the statements on Howard's answer would induce the court to direct an inquiry. His lordship then examined the admissions above stated on Ridler's answer, and ended by directing the bill to be dismissed as against the bank.

### *Exchequer.*

*Hooper v. Treffry.* Trinity Term, May 25, 1847.

#### MONEY PAID.—FAILURE OF CONSIDERATION.—BILL OF EXCHANGE.

*The defendant having some bark to dispose of, applied to the plaintiffs to find him a purchaser. The plaintiffs showed a sample to T., who agreed to purchase the bark at £7 per ton, provided it was equal to sample. The defendant shipped the bark, sent the plaintiffs the invoice, and requested them to accept a bill of exchange for the price of the bark. The plaintiffs accepted the bill upon a del credere commission. The bark was found inferior to sample, and T. repudiated the contract. The plaintiffs having paid the bill of exchange when due: Held, that they were entitled to recover the amount of money paid for the defendant's use.*

Assumpsit for money paid.—Plea non assumpsit.

At the trial before the Lord Chief Baron, it appeared that the defendant, having some bark to dispose of, applied to the plaintiffs, who were bark and leather factors, to find him a purchaser. The plaintiffs showed a sample to one Thompson, a dealer in bark, at Edinburgh, who agreed to purchase the bark at £7 per ton, provided it was equal to sample. The defendant shipped the bark, and sent the plaintiffs the invoice of it, and requested them to accept a bill of exchange, payable to the

order of Bosanquet and Co., for £379 10s., being the price of the bark. The plaintiffs, upon the offer of a *del credere* commission, accepted the bill. On the arrival of the bark, Thompson found that it was inferior to the sample, and refused to accept it. The plaintiffs having been called on to pay the amount of the bill of exchange, brought the present action to recover from the defendant the amount so paid. The learned judge left it to the jury to say whether the bark corresponded with the sample, and they found it did not, and returned a verdict for the plaintiffs for the amount of the bill. A rule nisi having been obtained to enter a nonsuit on the ground that the action was not maintainable against the defendant,

Gurney and Baddeley showed cause. The consideration upon which the plaintiffs accepted the bill having failed, they are entitled to recover the amount as money paid to the defendant's use. It is said that there is no privity between the plaintiffs and the defendant, and that the plaintiffs ought to have sued Thompson, but the fact of the bill having been accepted by the plaintiffs at the request of the defendant is sufficient to enable them to maintain this action.

Crowder in support of the rule. The action is improperly brought against the defendant. Thompson is the person who is liable to repay the plaintiff, and he could then recover the amount so paid as special damage in an action against the defendant for his breach of contract. Between the plaintiffs and defendant there is no privity whatever.

Pollock, C. B. The rule must be discharged. The bill was drawn by the defendant and accepted by the plaintiffs at the defendant's request. That is sufficient to create a privity between them. The bark turned out to be inferior to the sample, and Thompson in consequence repudiated the contract, so that the consideration upon which the plaintiffs accepted the bill wholly failed, and as they were compelled to pay it when due, they are entitled to recover back the amount as money paid to the defendant's use.

Alderson, Rolfe, and Platt concurred.

Rule discharged.

### *Bankruptcy.*

*In re Glover.* 20th October, 1847.

TRADER DEBTOR'S SUMMONS UNDER 1 & 2 VICT., c. 110.—PRACTICE.—SUFFICIENCY OF NOTICE.—SUFFICIENCY OF BOND.

*A notice accompanying affidavits of sufficiency by sureties need not state that the sureties are housekeepers or freeholders. When a bond proposed to be given under the stat. 1 & 2 Vict., 110, in addition to the ordinary condition prescribed by the statute, contained the words, "or shall be released by the plaintiff in such action:" Held, that these words were surplusage, and did not invalidate the bond.*

THE trader (Glover) was served with a copy

of affidavit filed in this court, and a notice requiring immediate payment of a debt, pursuant to the 1 & 2 Vict., c. 110, s. 8, and proposed to enter into a bond with two sureties. The debtor gave notice of his intention to present such bond to the commissioner for his approval this day, which notice was accompanied by office copies of affidavits of sufficiency by the sureties in the usual form. The bond being submitted to Mr. Commissioner Evans for his approval,—

The solicitor, on the part of the summoning debtor, objected, that the notice accompanying the affidavits of sufficiency was bad, inasmuch as it did not state that the sureties were "housekeepers" or "freeholders," pursuant to the rule of the common law courts in matters of bail. [Reg. Gen. T. T., 1 Will. 4, r. 2.] In support of this objection, he cited an anonymous case, 1 Dowling, p. 160, in which it was expressly held, that although a notice of bail was accompanied by an affidavit, in which it was stated that the bail was "a housekeeper," the bail might be rejected, as it was not stated in the notice also. There was a second objection to the form of the bond. The act of parliament provided that the bond should be conditioned "to pay such sum or sums as shall be recovered in any action or actions which shall have been brought, or shall hereafter be brought, for the recovery of such debt, together with such costs as shall be given in the same, or to render himself to the custody of the gaoler of the court in which such action shall have been or may be brought, according to the practice of such court, or within such time or in such manner as the said court or any judge thereof shall direct, after judgment shall have been recovered in such action;" and in the bond now presented a further condition was added, contemplating that the trader may be released by the summoning creditor from his debt.

Mr. Commissioner Evans, without calling on the debtor's solicitor, said, I am not disposed to give effect to an objection like that taken to the notice of sureties, unless I felt constrained to do so by some authority. The rules of the common law courts, in matters of bail, are not binding in this court in reference to trader debtors' summonses, and no rules have been framed by the commissioners of this court under the statute 1 & 2 Vict., c. 110. I do not think the omission of the word "housekeeper" in the notice of sureties material. As to the second objection, the bond contains the condition required by the act of parliament. Some other words are added which do not abridge the liability of the principal or his sureties, and may be treated as surplusage. If there is no objection to the sufficiency of the sureties, I shall approve of the bond.

The solicitor for the summoning creditor said, he was not prepared to deny that the sureties were sufficient.

Mr. Commissioner Evans. Then I approve of the bond.

# ANALYTICAL DIGEST OF CASES, REPORTED IN ALL THE COURTS.

## Common Law Courts.

### PRACTICE.

[Concluded from page 603, ante.]

#### INQUIRY, WRIT OF.

Upon the execution of a writ of inquiry directed to the sheriff in an action for a malicious prosecution, in which the damages are under 40s., a certificate under the stat. 3 & 4 W. 4, c. 24, s. 2, to entitle the plaintiff to costs, should be signed by the under-sheriff in the name of the sheriff and not in his own name. *Stroud v. Watts*, 2 C. B. 929.

#### INTERPLEADER.

*Payment of money out of court pending writ of error.*—Property taken in execution being claimed by the assignees of the debtor, who had become bankrupt, the sheriff sued out an interpleader rule, and an issue was directed, the assignees to be plaintiffs, and the execution creditor defendant; the money levied being, in the meantime, paid into court. On trial of the issue, the assignees recovered, but, the defendant having tendered a bill of exceptions, error was brought in the Exchequer Chamber. The court gave judgment, quashing the writ of error. The assignees then moved this court to make an order under the Interpleader Act, 1 & 2 W. 4, c. 58, for payment of money to them; but, before cause shown, the defendant brought error in the House of Lords.

There being no proof that the last writ of error was frivolous, this court refused to make such order, pending the writ. *King v. Birch*, 7 Q. B. 669.

#### IRREGULARITY.

*Waiver.*—*Laches.*—Assignees of a bankrupt applying to set aside proceedings on the ground of irregularity, must come to the court within a reasonable time after notice of the irregularity.

An original writ of *fi. fa.* and a *testatum* writ were issued out on the 23rd of Feb., and on the same day the defendant's goods were seized under the *testatum* writ. On the 26th, the original writ, with the return of *nulla bona*, was filed in the proper office of this court. On the 25th, a fiat in bankruptcy was issued against the defendant, and on the 10th of March creditor's assignees were appointed. The plaintiff having made up the roll, on the face of which the original writ appeared to be regularly returned before the issuing of the *testatum* writ, the defendant's assignees applied to a judge at chambers, on the 10th of March, to have the roll amended by inserting the true date of the return of the *testatum fi. fa.*, and were referred by the judge to the court: *Held*, that this was at most an irregularity, and that a motion made on the 5th of May for that purpose was too late. *Butterworth v. Williams*, 4 D. & L. 82.

See *Court Baran*.

#### ISSUE.

*Counsel's signature.*—*Writ of trial.*—*Form*



of issue.—In Common Pleas the signature of counsel to the pleadings need not appear on the issue delivered.

An issue in a cause to be tried before the sheriff pursuant to the stat. 3 & 4 W. 4, c. 42, s. 17, delivered with a blank for the teste of the writ of trial, is defective. The defendant should apply to a judge at chambers to amend the issue at the plaintiff's expense. It is no ground of objection, that a blank is left for the return of the writ of trial. *Jefferies v. Yablouski*, 2 C. B. 924.

#### JUDGES' NOTES.

*Sheriffs' Court.*—This court cannot aid a party in obtaining a copy of the notes taken at a trial.

An application for a rule that a defendant might be furnished with a copy of the notes taken by the judge of the Sheriffs of London's Court on a former trial between the same parties, was refused. *Parkhurst v. Gosden*, 2 C. B. 894.

#### JUDGE'S ORDER.

1. *Rule of Court.*—A motion to make a judge's order a rule of court, and for the costs of the application, is absolute in the first instance, if made upon the affidavit required by Reg. Gen. T. T. 3 Vict. *Black v. Lowe*, 4 D. & L. 285.

2. *Judgment.—Attestation of consent.*—The "orders of the judges" of 12th June, 1845, printed *ante*, vol. 14, p. 335, is not a rule of court, but a mere regulation for the guidance of the judges at chambers; and, therefore, where a judge's order for judgment had been obtained on a written consent, signed by a defendant, and attested by an attorney acting also for the plaintiff, the court refused to set aside the order and judgment signed thereon. *Dixon v. Sleddon*, 15 M. & W. 427.

And see *Arrest*, 1.

#### JUDGMENT AS IN CASE OF NONSUIT.

A defendant is entitled to move for judgment as in case of a nonsuit, although the cause, on being called on for trial, was struck out of the list in consequence of neither plaintiff nor defendant appearing. *Allott v. Bearcroft*, 4 D. & L. 327.

#### MANDAMUS.

1. A parish clerk was dismissed from his office on a charge of misconduct by the incumbent in Nov. 1841, who died in the year 1844. The clerk made written applications to the incumbent in the year 1843 and 1845, but could obtain no answer. A rule *nisi* for a mandamus to the incumbent to restore him to the office was obtained in January last, and it was stated on the affidavits that the poverty of the applicant was the reason why an earlier application had not been made.

*Held*, that under the facts of this case, the application for a mandamus was not made to the court in proper time. *The Queen v. Gifford*, 34 L. O. 228.

2. *Laches.*—*Quarter sessions.*—At the Epiphany quarter sessions, upon objection to a no-

tice of appeal, the justices had dismissed the appeal, subject to a special case, or a motion for a mandamus. *Held*, that the applicant was not too late in applying, in the Easter Term following, for a mandamus to hear the appeal. *Reg. v. Justices of Cheshire*, 4 D. & L. 94.

Cases cited in the judgment: *Rex v. Justices of Pembrokeshire*, 2 B. & Ad. 391; *Reg. v. Justices of the West Riding of Yorkshire*, 1 G. & D. 706; 2 Q. B. 505.

3. *Shareholder in a bridge.—Poor-rate.*—Commissioners were appointed by statute for building a bridge, the tolls to be vested in them, with power to contract for the building and repairs, and to convey the tolls to the parties with whom they contracted, charged with certain payments. The commissioners contracted accordingly with certain subscribers, who agreed to build and repair the bridge; and the commissioners agreed, when the bridge should be built, to convey over in perpetuity all the tolls, &c. to the subscribers, their executors, &c., to hold as tenants in common and not as joint tenants, or as such subscribers should appoint.

The bridge being built, the commissioners by indenture reciting the contract, assigned to the trustees in fee the bridge and tolls, upon trust to permit and suffer the subscribers, their heirs and assigns, to take the tolls, and to have the sole management thereof, and to appoint receivers, &c., on condition that the subscribers should make certain annual and other payments, keep the bridge in repair, pay salaries, &c., and should in the last place, yearly for ever, share all the residue of the tolls, &c. among the subscribers for the time being, and their respective heirs and assigns, proportionably to their several shares and interests, as tenants in common and not as joint tenants. Proviso, that if the trustees, their heirs and assigns, should adjudge that the subscribers had made default in the payments, &c., they should not, during such default, be permitted to receive or solely manage the tolls, but the trustees should receive and manage the same, and do whatever the subscribers were required to do.

The subscribers entered into receipt of the tolls, which were taken, in part, at a toll-house at one end of the bridge, in the parish of Putney. *H. C.* was proprietor of a small share, and was clerk to the subscribers, but was not appointed to represent them in any other manner; nor was he an inhabitant of Putney. In a poor-rate for that parish, he and many other persons were assessed together as owners and occupiers of part of the bridge, which was situate in Putney. *H. C.* did not appeal; and being summoned before a justice of one of the metropolitan police courts, disputed his liability, and contended that some persons were improperly inserted in the assessment, and (as the fact was) that some proprietors were omitted. The justices declined issuing a distress warrant.

This court granted a mandamus, calling upon the justice to issue such warrant.

*Held*, by Lord Denman, C. J., and Patteson, J., that *H. C.* might be distrained upon for

the rate, and must obtain contribution as he could from the said subscribers. By *Williams and Wightman, J's* that *H. C.* was at all events liable for some portion of the rate, and not having appealed, could not now contend that he was rated for too much, or that other persons were improperly joined with him as subscribers, or omitted. *Reg. v. Paynter, 7 Q. B. 255.*

#### MARRIED WOMAN.

See *Execution, 3.*

#### MISDIRECTION.

*Arrest.*—*New trial.*—In case for maliciously, and without reasonable or probable cause, causing the plaintiff to be arrested on a *capias* under the stat. 1 & 2 Vict. c. 110, s. 3, the order for which had been obtained upon an affidavit not fairly disclosing the nature of the contract, for the alleged breach of which the defendants were suing, the judge having stated that, in his opinion, the plaintiff had failed to make out a want of reasonable and probable cause, told the jury that, to entitle the plaintiff to a verdict, they must be satisfied that there was a total want of reasonable and probable cause, and that the defendants had acted with malice: *Held, a misdirection. Gibbons v. Alison, 3 C. B. 181.*

#### OUTLAWRY.

*Want of proclamations.*—Judgment of outlawry, for not appearing to answer an indictment for high treason, was reversed after the lapse of 116 years, on writ of error sued out by a co-heir of the outlaw, because it did not appear by the record that proclamations had been made, or a writ of proclamation issued.

Judgment, that the outlawry be reversed, and the co-heir, plaintiff in error, be restored to all things which he hath lost, &c. *Tynte v. The Queen, 7 Q. B. 216.*

#### PARTICULARS OF DEMAND.

1. The plaintiff's particulars of demand claimed "the sum of 450*l.*, for his services as clerk or manager to the defendant, from Aug., 1837, to Oct., 1839, inclusive, after the rate of 200*l.* per annum." The proof was an agreement by the defendant that the plaintiff, who was the manager of a banking company, should have a certain per centage, by way of commission, on all business he should introduce to the defendant: *Held, that the particulars were not sufficient to let in such a demand, and that the defendant was, in strictness, entitled to a nonsuit. Law v. Thompson, 15 M. & W. 541; S. C. 4 D. & L. 54.*

2. In an action on the indebitatus counts by a broker, to recover the amount of shares purchased for the defendant, and commission on the same, the court obliged him to furnish the dates of the purchases within the compass of a few days, and the name of the parties from whom purchased. *Berkeley v. De Vere, 4 D. & L. 97.*

3. *Defects in execution of power.* In ejectment brought by remainder-man against lessee

of the late tenant for life, on the ground that the lease was granted under a power not properly executed, the court will, on motion, order the lessor of the plaintiff to give particulars of the alleged defects in the execution. *Dec'd. Lord Egremont v. Williams, 7 Q. B. 686.*

See *Ejectment, 3.*

#### PAUPER.

1. *Misconduct in suit.*—*A.*, suing in *formā pauperis*, neglects to proceed to trial pursuant to notice, the defendant is entitled to the costs of the day, under the rule of H. 2 W. 4, r. 110, but not to dispauper *A.*

Notice of trial having been given and the cause entered, *A.*'s attorney's clerk was, by a blunder in issuing the jury process, prevented from passing the record in due time. The court ordered *A.* to pay the costs of the day. *Hodges v. Topliss, 2 C. B. 921.*

2. *Release.*—*Lateness of motion.*—A plaintiff sued in *formā pauperis*, and after action brought, executed a release to the defendants; the release having been pleaded *puis darrien continuance*, the court set it aside on the application of the plaintiff's attorney.

It is not too late to apply on the 6th of June to set aside such a plea which had been delivered on the 22nd of April. *Wright Burroughes, 4 D. & L. 226.*

#### PEREMPTORY UNDERTAKING.

*Enlargement.*—On a cause being called on for trial, the plaintiff, who had given a peremptory undertaking to try, applied for its postponement, on the ground of the absence of a material witness. Pending the application, it was discovered that, owing to some defect in the entry of the record, the cause could not be tried; and it was accordingly struck out of the list. The court discharged a rule absolute for judgment as in case of a nonsuit, which was subsequently obtained, and enlarged the plaintiff's peremptory undertaking. *Rogers v. Vaudercom, 4 D. & L. 102.*

Cases cited in the judgment: *Ward v. Turner, 5 Dowl. 22; Petrie v. Cullen, 2 D. & L. 604; 7 M. & G. 1020; 8 Scott, N. R. 705; Lumley v. Dubourg, 3 D. & L. 80; 14 M. & W. 295.*

#### PREROGATIVE OF THE CROWN.

*Venue.*—The prerogative of the crown to change the venue in an action can only be exercised by the crown officers in actions coming within the class of personal in the sense of transitory.

*Quære.* Whether in a rule to show cause the Attorney-General has, officially, in this court, a right to the final reply. *Hilton v. Lord Granville, 34 L. O. 134.*

#### PRIVILEGE.

See *Arrest, 4.*

#### PROCESS.

1. *Description of defendant.*—The copy of a writ of summons, served on the defendant, described him as "*J. S.*, late of *B.*, in the county of *York*, but now in the Castle, in the city of *York*:" *Held, sufficient, it not being*

that there was not a place called the Castle within the city of York, though it was sworn that York castle is in the county of York. *Balman v. Sharp*, 16 M. & W. 93.

2. *Description of defendant*.—In a writ of summons the description of the defendant's residence was, "of Clapham, in the county of Surrey." Held, on a motion to set aside the writ and service thereof, that this description was sufficient, there being no evidence before the court of the description of place Clapham was. *Bowditch v. Toulmin*, 34 L. O. 230.

#### QUARE IMPEDIT.

See *Striking out Counts*.

#### REPLICATION.

To a declaration in debt for goods sold and delivered, and on an account stated, the defendant pleaded, that by a certain indenture bearing date, &c., (proferat,) the plaintiff released to the defendant the debts and causes of action in the declaration mentioned. The plaintiff replied *non est factum*, on which issue was joined: Held, that the plaintiff, under this replication, could not give in evidence that the debt for which the action was brought was not included in the release, but should have new assigned. *Jubb v. Ellis*, 3 D. & L. 364.

#### RIGHT TO BEGIN.

1. *Life Policy*.—In an action on a life policy, the declaration averred, that a certain statement by the insured that he had not been afflicted with certain disorders which were named, (amongst which was rupture,) was true. The defendant pleaded that the statement was untrue in this, to wit, that the insured had been afflicted with rupture, concluding with a verification.

Replication *de injuriâ*. Held, that the plaintiffs were entitled to begin. *Ashby v. Bates*, 4 D. & L. 33; S. C. 15 M. & W. 589.

Cases cited in the judgment: *Geach v. Ingall*, 14 M. & W. 95; *Rawlins v. Desbrough*, 3 C. & P. 321.

2. In an action by payee against maker of a promissory note for 100*l.* and interest, the defendant pleaded, as to parcel of the monies, pleas the issues upon which lay on the defendant; and to the residue, payment of a sum of money into court, and that the defendant was not indebted in a greater amount; to which the plaintiff replied, that the defendant was indebted to him in a greater amount, and issue was joined thereon: Held, that the plaintiff was entitled to begin at the trial. *Booth v. Millns*, 15 M. & W. 669; S. C. 4 D. & L. 52.

Case cited in the judgment: *Cripps v. Wells*, C. & Mar. 489.

#### SALE UNDER FI. FA.

*Expenses*.—A motion to return auction fees, &c., on the ground that the goods were transferred by the sheriff, by bill of sale, to the plaintiff who employed the auctioneer, and that the auctioneer was employed by the latter, should be made against the sheriff, and not against the plaintiff in the action. *Bushell v. Boord*, 4 D. & L. 359.

#### SPECIAL CASE.

*Effect of death of party*.—Where, by order of nisi prius, a cause is referred to a barrister to state a special case, it is no ground for setting aside the case that it is stated after the death of one of the parties. *James v. Crane*, 15 M. & W. 379.

#### STAYING PROCEEDINGS.

1. *Second action*.—Where a plaintiff sued in debt for work and labour, and obtained a verdict, which was afterwards set aside, and a new trial ordered, and instead of proceeding again to trial, he commenced a fresh action *in forma pauperis*, in respect of the same subject matter in assumpsit, declaring on a special contract; the court made absolute a rule to stay proceedings in the second action until the former was discontinued or determined. *Haigh v. Paris*, 4 D. & L. 325.

Case cited in the judgment: *Thrustout d. Park v. Troublesome, Andrews*, 297.

2. *Time to plead after dismissal of summons for particulars*.—Where a defendant, having obtained an order for time to plead, takes out a summons for particulars, which is dismissed after the expiration of the time given for pleading, he is entitled only to the remainder of the same day for pleading. *Mengens v. Perry*, 15 M. & W. 537.

Cases cited in the judgment: *Hughes v. Walden*, 5 B. & C. 770, n.; *Vernon v. Hodgins*, 1 M. & W. 151.

3. *Second action for same cause*.—Where, in an action of debt for work and labour, the plaintiff obtained a verdict, but the court granted a new trial, on the ground that he ought to have declared specially, and he thereupon, without discontinuing that action, brought another for the same cause in assumpsit, declaring specially; the court stayed the proceedings in the latter action until the former was disposed of. *Haigh v. Paris*, 16 M. & W. 144.

Case cited in the judgment: *Thurstout d. Park v. Troublesome, Andr.* 297.

See *Trial*, 4.

#### STRIKING OUT COUNTS.

*Quare impedit*.—*Rules of H. T.*, 4 W. 4.—The rules of Hil. T. 4 W. 4, do not apply to actions of *quare impedit*. In *quare impedit*, the declaration contained 6 counts, all founded upon the same title, but taking it up from different periods. The court refused to put the plaintiff to his election upon which of the counts he would rely. *Tolson v. Bishop of Carlisle*, 3 C. B. 41.

#### TIME TO PLEAD.

1. *Pleading peremptorily*.—A judge's order made by consent for further time to plead "peremptorily," does not preclude the defendant from afterwards applying by summons for further time. *Beasley v. Bailey*, 4 D. & L. 271.

2. *Effect of peremptory order*.—An order

"peremptory" for time to plead does not preclude the defendant from again applying by summons for further time; and if he take out such further summons, judgment signed for want of a plea after the summons is returnable, is irregular. *Beasley v. Bailey*, 16 M. & W. 58.

See *Staying Proceedings*.

#### TRIAL, NEW.

1. *Common Pleas, Lancaster.*—*Writ of trial.*—Where a cause has been tried in a borough court on a writ of trial issuing out of the Court of Common Pleas at Lancaster, a motion for a new trial cannot be made to a judge sitting *in banco* at Westminster, under the 4 & 5 W. 4, c. 62, s. 26. *Bury v. Peers*, 4 D. & L. 163.

2. *Signing judgment after first four days of term.*—Leave was given to a defendant to move for a new trial after the first four days of a term; but the name of the case was not inserted in the "New trial notice paper," nor was any notice of the circumstances given to the plaintiff. The plaintiff signed judgment on the 5th day of the term. A rule for a non-suit or new trial was afterwards served on the plaintiff's attorney. A rule was granted to discharge that rule, but was ordered to stand over till the merits of the first granted rule should be disposed of. The defendant's proper course would have been to have moved to set aside the judgment. *Lloyd v. Berkovitz*, 16 M. & W. 31.

3. *Short notice.*—Where a defendant is under terms to take short notice of trial *if necessary*, it lies with the plaintiff to show the necessity of a shorter notice than the ordinary one. And where the defendant being under such terms, the plaintiff delivered a replication on the 14th of May, which on the 19th he abandoned, and delivered another with the similitur added; on the 21st obtained an order to try before the sheriff; on the 23rd delivered the issue with notice of trial for the 28th; and on the latter day tried the cause as undefended, and obtained a verdict, the court set it aside with costs, on the ground that the plaintiff had had time to give the ordinary notice. *Drake v. Pickford*, 15 M. & W. 607.

4. *Stay of proceedings.*—*Countermand.*—Where the plaintiff's replication concludes to the country, he may at once give notice of trial, although issue is not formally joined between the parties.

Where a rule *nisi* contains a stay of proceedings, this only restrains the parties from proceeding on with the action, but does not preclude them from countermanding their notice of trial. *Mullins and others v. Ford*, 34 L. O. 63.

#### TRIAL, WRIT OF.

*Several issues.*—*Waiver.*—A writ of trial directing "the issue" to be tried, when there are several issues joined, is irregular; but if the defendant appears at the trial, he waives the irregularity. *Towers v. Turner*, 4 D. & L. 177.

#### VENUE.

1. In the margin of an indictment for pub-

lishing a libel, the venue was, "Central Criminal Court, to wit," in the body the offence was laid to have been committed in the parish of St. Mary-le-Strand, in the county of Middlesex, within the jurisdiction of the Central Criminal Court." Held, that the bill was properly found by the grand jury of the Central Criminal Court, and, on certiorari, might be removed to the Court of Queen's Bench at Westminster, and judgment be pronounced by this court on the defendant then withdrawing his plea of not guilty. *Reg. v. Gregory*, 7 Q. B. 274.

2. *Bringing back.*—*Construction of undertaking.*—The undertaking to give material evidence upon bringing back the venue to the county in which it was originally laid, is satisfied by proving any fact which materially conduces to the establishing of matter which may be in issue, arising in the county to which the cause is restored, or tending to enhance the damages—*per Tindal, C. J., and Maule and Cresswell, J.'s; dissentiente, Erle, J.*, who held that the undertaking binds the plaintiff to prove some matter arising in the original county, which is indispensable to be proved in order to maintain the action, or which tends to enhance the damages.

So, although the course of the pleadings or of the evidence may render such fact immaterial.

Therefore, in an action for crim. con., an act done in Middlesex in furtherance of a plan for hiring lodgings at Bath, for the purpose of facilitating the commission of adultery there, was held by Tindal, C. J., and Maule and Cresswell, J.'s, to be a sufficient compliance with an undertaking to give material evidence in Middlesex; *dissentiente, Erle, J.* *Clark v. Dunsford*, 2 C. B. 724.

Cases cited in the judgment: *Santler v. Heard*, 2 W. Bla. 1031; *Swaine's case*, 1 Siderf. 405; *Lawson v. Mangles*, 2 M. & Rob. 427; *Clark v. Reed*, 1 N. R. 310; *Guard v. Hodge*, 10 East, 32; *Gilling v. Dugan*, 1 C. B. 8; *Lindley v. Bates*, 2 C. & J. 659; 2 Tyrwh. 746.

#### WARRANT.

*Sureties to answer indictment.*—*Discharge on undertaking to bring no action.*—A warrant of a judge of Queen's Bench issued, directed to the governor of a gaol, constables, &c., directing them to apprehend and take a party against whom a bill for a misdemeanor had been found at quarter sessions, "and him safely keep, to the end that he may become bound and find sufficient sureties to answer the indictment, and be further dealt with according to law."

Held, a bad warrant, for not directing that the party should be brought before some judge or justice to be bound.

And this court discharged the party without imposing the condition that no action should be brought. *Reg. v. Downey*, 7 Q. B. 281.

[The "Table of Contents and General Index," comprise references to the several sections of this Digest throughout each volume, and thereby each part of it may be readily found.]

## COMMON LAW SITTINGS.

## Common Pleas.

In and after Michaelmas Term, 1847.

In Term.

MIDDLESEX.

LONDON.

Wednesday . Nov. 10 | Friday . . . Nov. 12  
 Wednesday . Nov. 17 | Friday . . . Nov. 19

After Term.

MIDDLESEX.

LONDON.

Friday . . . Nov. 26 | Saturday . . . Nov. 27

The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Saturday the 27th Nov., in London, no causes will be tried, but the court will adjourn to a future day.

\* \* For the Queen's Bench and Exchequer Sittings see p. 576, ante.

## COMMON LAW CAUSE LISTS.

## Queen's Bench.

## NEW TRIALS.

Remaining undetermined at the end of the Sittings after Trinity Term, 1847.

Hilary Term, 1846.

London.—The Queen v. F. Kensington—Mr. Whitehurst.

Easter Term, 1846.

York.—Worth and another v. Gresham—Dundas.

Liverpool.—Doe d. Hayward v. Tinslay—Crompton.

Michaelmas Term, 1846.

London.—Herring v. Meteyard.—W. H. Watson.

London.—Simpson v. Margitson—Same.

York.—Lockwood v. Wood—Same.

Liverpool.—Hobson and others v. Garner.—Knowles.

Kent.—Nunn v. Jackson—Serjeant Channell.

Kent.—Absolon v. Marks.—Peacock.

Surrey.—Carruthers v. West.—Charnock.

Norwich.—Linford, a pauper, v. Fitzroy—O'Mally.

Carmarthen.—Bowen v. Owen and another—W. H. Watson.

Devon.—Harrison v. Bankart—Crowder.

Cornwall.—Stevens v. Jeacocke—Cockburn.

Wilts.—Robins v. Fennell and others—Crowder.

Somerset.—The Queen v. Chorley—Serjeant Kinglake.

Tried during Michaelmas Term, 1846.

Middlesex.—Greville v. Stultz and others in error—Barstow.

Hilary Term, 1847.

Middlesex.—Richardson v. Berkeley—Knowles.

Middlesex.—Coales v. Simmonds—Serjeant Shée.

Middlesex.—Normansel v. Creft—W. H. Watson.

Middlesex.—Doe d. Sumner v. Nash—Peacock.

Middlesex.—The Queen v. Long, Esq.—Humphrey.

Middlesex.—Same v. Watson—Sir F. Thesiger.

Middlesex.—Same v. Button and others—Serjeant Allen.

Middlesex.—Blundell v. Drummond—Bramwell.

Middlesex.—Jones and another v. Blant and others—Sir F. Thesiger.

Middlesex.—Gant v. Cuts.—Willis.

London.—Thame v. Beas.—Serjeant Shée.

London.—Penhall v. Harbong.—Knowles.

London.—Spinks v. Boddall—Serjeant Wilkins.

London.—Sims v. Henderson—Barstow.

London.—Henderson v. Henderson—Same.

London.—Mitchell v. Moore—Cockburn.

Tried during Hilary Term, 1847.

Middlesex.—Flower v. Reper.—Wordsworth.

Easter Term, 1847.

Middlesex.—The Queen v. Mary Nixon—Serjeant E. C. Jones.

London.—Curling v. Young and others—Humphrey.

London.—Newton and another v. Belcher—Crowder.

London.—Burrows and another v. Gabriel and others—Same.

Kent.—Lilley, a pauper, v. Elwin—Serjeant Shée.

Surrey.—Parratt v. Newte—Serjeant E. C. Jones.

Bedford.—Doe d. Crawley v. Gutteridge—O'Mally.

Suffolk.—Pye v. Mumford—Andrews.

Norfolk.—Angerstein v. Caius College, Cambridge—O'Mally.

Lincoln.—Huntley v. Russell and another—Whitehurst.

Warwick.—Bower v. Wood—Same.

Lancaster.—Turner and another v. Hartley—Martin.

Durham.—Wren v. Heslop and another—Knowles.

Durham.—Wright v. Gibson—Same.

City, York.—Nicol v. Alison—Same.

York.—Pollock, the younger v. Stables—Baines.

York.—Kilner and another v. Preston—Same.

York.—Lee and others v. Dawson—Same.

Liverpool.—Walker v. Mellor and another—W. H. Watson.

Liverpool.—Yates v. Fenton—Knowles.

Flint.—McKillock v. Cooke—Townshend.

Chester.—Sutton v. Swanwick and another—Chilton.

Worcester.—Cheshire v. Hair—Godson.

Hereford.—Doe d. Huck, a pauper, v. Rimall and others—Same.

Gloucester.—Parratt v. Lambert—Same.

Somerset.—Robertson and another v. Norris—Crowder.

Somerset.—The Queen v. Inhabitants of Tything, East Mark—Cockburn.

Somerset.—The Queen v. Inhabitants of Tything Moore—Same.

Tried during Easter Term, 1847.

Middlesex.—Levi v. Irwin—Charnock.

Trinity Term, 1847.

Middlesex.—Clayards v. Dethick and another—Miller.

London.—Wallington v. Lambert, Bart. (sued, &c.)—Chambers.

London.—Crampton v. Green—Petersdorff.

London.—Russell v. Smith—W. H. Watson.

## SPECIAL CASES AND DEMURRERS.

Michaelmas Term, 1847.

Whitmore and Co.—Morris, Bt., v. Duke of Beaufort, dem.

J. Lewis.—Lewis v. Harris, dem.

Briggs and Son.—Howard v. Clarkson, dem.

Elmalie and P.—Connop and another, executor, &c. v. Levy, dem.

Williamson.—Hilton v. Whitehead, special case.

Hawkins—Maldon v. Fyson, special case.

- Atkinson.—Webster v. Watts, dem.  
 Wire and Co.—Hills v. Croll, dem.  
 Johnson and Co.—Clarkson v. Glover, dem.  
 Barker and B.—Vigers v. Dean and Chapter of St. Paul and others, dem.  
 Ashley.—Sayer v. Dufaur, dem.  
 Dufaur.—Harvey v. Sayer, dem.  
 Ashley.—Groves v. Barnett and another, dem.  
 Everest and Co.—King v. Marman and others, dem.  
 Johnson and Co.—Hall v. Bainbridge, special case.  
 Philpot.—Morrell v. Biddle, special case.  
 Butt.—The Right Hon. H. Hobhouse v. James, special case.  
 Lewis.—Nathan v. Lazarus, dem.  
 Angell.—Angell, plaintiff in person v. Harrison and others, dem.  
 Fyson and C.—Phillips v. Curling, special case.  
 Pemberton.—Mills v. Blackall, dem.  
 Bigg and Co.—Jones, executor, &c. v. Meares, executor, &c., special case.  
 J. and C. Rogers.—Banks v. Newton, error.  
 Fluder.—Meares v. Prangley, dem.  
 Wright.—Filliter v. Phippard, arrest of judgment.  
 Husband and W.—Reeves and another v. Pedlar and another, dem.  
 Same.—Barber v. Lemon, dem.  
 White.—Doe d. Lord v. Kingsbury, special case.  
 Mortimer.—Newbatt v. Salmood and others, dem.  
 Moultrie.—Humphreys v. Cooke dem.  
 Dickson & Co.—Laurie, Knt., and others, Kirk, dem.  
 Parkinson.—Henshaw v. Fletcher and another, dem.  
 Clowes & Co.—Doe d. Snape v. Nevill, special case.  
 Fitch.—Ward and others v. Liddiman, dem.  
 Tribe.—Bailey v. Harris, dem.  
 Todd.—Attwood v. Jolliffe, Clerk, and another, special case.  
 Corfield.—Cook v. Gell, dem.  
 Lewis and L.—Bunn v. Lind, dem.  
 Luttlly and B.—The Surrey Iron Railway Company v. Chaplin, dem.  
 Ravenscroft.—Hallen; infant, v. Taylor, clk., dem.  
 Stretton.—Lock v. Neale, dem.  
 Gregory and Co.—Williamson, admix., &c. v. Davies, dem.  
 Gough.—Bowers v. Nixon, dem.  
 Hodgson and B.—Cochrane v. Young, dem.  
 Kennedy.—Jones v. Greatley, dem.  
 C. Bell.—Clegg and others v. Dearden, special verdict.  
 Hughes and Co.—Berkeley and another v. W. Ingram, dem.  
 Westmacott and Co.—Spencer and another v. Haggiadur in error, error.  
 Sawyer and B.—Doe d. several dems. Patrick v. Royle, clk. and wife, special case.  
 Roy & Co.—Doe dem. Smith v. Biskin, special case.  
 Williamson & H.—Dails v. Lloyd and another, special case.
- London.—Brown v. De Winton.  
 London.—Hartley v. Cummings and another.  
 London.—Hartley and another v. Cummings and another.  
 London.—Baker and another v. Plaskitt.  
 London.—Mollett v. Wackerbarth and others.  
 London.—Angle v. Gilpin.  
 London.—Maxey v. Thomas.  
 Surrey.—Couling v. Cox.  
 (Part heard, 5th June.)  
 Cornwall.—Doe (Lord) v. Crago.  
 Cornwall.—Cooze v. Cayzer.  
 Derby.—Cox, surviving, &c. v. Glue.  
 Derby.—Same v. Saint.  
 Derby.—Cox, surviving, &c. v. Mousley.  
 Derby.—Batho and another v. Batthyany.  
 Warwick.—Valpy and others, assignees, &c. v. Sanders and another.  
 Warwick.—Tunncliffe v. Tedd.
- New Trials of Hilary Term last.*  
 Middlesex.—Doe (Miller) v. Claridge.  
 Middlesex.—Varney v. Hickman.  
 Middlesex.—Stroeter v. Bartlett.  
 London.—Hitchin v. Groome.  
 London.—Smith and others, assignees, v. Watson.  
 London.—Gay and another v. Launder.  
 London.—Miles v. Pope.  
 London.—Beaumont v. Brengeri.  
 London.—Brown v. Chapman.  
 London.—Baker v. Sayer.  
 London.—Adlington v. West.
- New Trials of Easter Term last.*  
 Middlesex.—Morgan and another, ex. v. Earl of Abergavenny.  
 Middlesex.—Thompson v. Stocken.  
 Middlesex.—Hume v. Davis.  
 Middlesex.—Goddard v. Dobson and another.  
 Middlesex.—Finney v. Tootell.  
 Middlesex.—Murray and others v. Hall.  
 Middlesex.—Lindus v. Bradwell.  
 London.—Nickels v. Ross, jun.  
 London.—Same v. Same.  
 London.—Humphreys v. Shuttleworth.  
 London.—Goodlake v. King.  
 London.—Green v. Morson and another.  
 London.—Hopwood v. Thorn.  
 London.—Ingram v. Symons.  
 London.—Barker v. Griffiths.  
 London.—Perry v. Parr.  
 London.—Blackie v. Pidding.  
 Surrey.—Eyre v. Scovell and others.  
 Denbigh.—Beech v. Jones.  
 Chester.—Chaddock v. Wilbraham and another.  
 Chester.—Worthington v. Warrington.  
 Gloucester.—M'Leod v. Reynolds.  
 Salop.—Doe (Bather) v. Brayne and another.  
 Hants.—Ansell v. Richards.  
 Somerset.—Card v. Case.  
 Norfolk.—Garrard v. Tuck (in dower.)  
 Suffolk.—Thorpe v. Barber and another.  
 Suffolk.—Vipan v. Gay and others.  
 Suffolk.—Same v. Same.  
 Brecon.—Griffiths v. Powell.  
 Liverpool.—Howden v. Standish, Esq.

## Common Pleas.

Remanet Paper of Michaelmas Term, 1847.

## Enlarged Rules.

- To 1st day.—Strickland v. Hawkins.  
 .. .. Field v. Mackenzie, pub. offi.  
 To 6th day.—Barnes and another v. Attwood.  
 .. .. Same v. Same.

## New Trials of Michaelmas Term, last.

Middlesex.—Shaw and others v. Clarkson.

## New Trials of Trinity Term, last.

- Middlesex.—Barnes, adm. v. Ward.  
 London.—Alexander v. M'Kenzie, pub. offi.  
 London.—Belcher & others, assignees, v. Patten.  
 London.—Doe dem. Royle and others v. Allison.  
 London.—Same v. Same.  
 Middlesex.—Young v. Geiger.  
 Middlesex.—Same v. Same.

## CUR. AD. VULT.

Patteson and others v. Holland and others.  
To stand over till the *sci. fa.* in Queen's Bench is disposed of.

Brown and others v. Mallett.

*Demurrer Paper of Michaelmas Term, 1847.*

Wednesday 10th Nov.

Joel v. Deen.

Leigh v. Earl of Balcarras and others.

Hodgkinson v. Taylor.

Smart and another v. Sandars and others.

Jones v. Sawkins.

Dicker v. Jackson.

Tamlyn v. Woolcock.

Owen v. Challis.

Sullivan v. Prole.

Rutson v. Pratt.

Follett and another, assignees, v. Hoppe & others.

Cocks v. Purday.

Pilbrow v. Pilbrow's Atmospheric Railway and Canal Propulsion Company.

Harris v. Marten, sued, &c.

Smith v. Kenrick.

Hayward v. Bennett.

Engstrom and others v. Brightman and others.

Balding and ux. v. Crowther.

Smith v. Marsack.

Croggon v. Ward and another.

Peter v. Daniel.

Tripp v. Shrapnell.

Mortimer and others v. Hartley and others.

## Exchequer of Pleas.

## PEREMPTORY PAPER.

*For Michaelmas Term, 1847.*

To be called on the first day of the Term, after the motions, and to be proceeded with the next day, if necessary, before the motions.

## Rule Nisi.

7th June, 1847.—Ryland, jun., v. Small and others—Mr. Martin.

29th April, and 8th May, 1847.—Rogers v. Treveltham—Mr. Ball, Mr. Needham.

25th May, 1847.—Thompson v. Langridge—Mr. Bramwell, Mr. Willes.

1st June, 1847.—Hallett, jun., v. Vigne—Willes, Attorney-General.

9th June, 1847.—Howard v. Deacon—Lush, Wordsworth.

8th June, 1847.—Evans and others v. Powis—Mr. Brown, Mr. Bramwell.

11th June, 1847.—Green v. Crockett—Skinner.

## DEMURRERS.

*Michaelmas Term, 1847.*

## For Judgment.

Duncan v. Benson.

(Heard 5th May, 1847.)

Chamberlain v. The Chester and Birkenhead Railway Company.

(Heard 8th May 1847.)

## For Argument.

Griffiths v. Pike.

(To stand over until special case settled.)

Duke, Kt. and others v. Forbes.

(Part heard 7th June, 1847.)

Grout v. Enthoven, sued, &c.

Spindler and wife v. Grellett.

Worthington v. Wanklyn.

Graham and others, assignees, v. Allsop.

Jarvis v. Direks.

Alder and another, assignees, &c., v. Newman and another.

Higgs v. Mortimer.

Roper v. Hanson.

Ramsden v. The Manchester South Junction and Altringham Railway Company.

Hasluck v. The Eastern Counties Railway Co.

Porral and others v. Jones and another.

Earle v. Oliver.

Price and another, executors, v. Woodhouse and another.

Kemp v. Nash, (sued with Hutton and another.)

Kemp v. Hutton and another, (sued with Nash.)

Bryant v. Bobbett.

Bates v. Townley and another.

(Proceedings stayed until security given for payment of defendant's costs.)

Kirkwood and another v. Musgrave.

Brown and another v. Whiteway and others.

Gravatt v. Ward.

Collins v. Ozaune and others.

Dorrington v. Carter.

Ricketts and others v. Phillips.

Craig v. Levy, (in error.)

Parker, executor, v. Harrison.

Eyre v. Waterhouse.

Earl of Lindsey v. Capper and others.

Brine v. Bazalgette.

Pratt v. Pratt and others.

Austen v. Kolle.

Hewes v. Angell.

Sedman v. Walker, Esq., and Stephenson.

Sadler and others v. Johnson.

Davis (qui tam) v. Arden.

Bass v. Miller.

Hernaman and another, assignees, &c. v. Geach.

Heale v. Clarke.

Bullpett and others v. Doswell.

James v. Woodhouse and another.

Moon v. Durden, jun. (sued, &c.)

Davis v. Durden, jun., (sued, &c.)

Ulph v. Mines.

Coupland v. Challis.

Heward v. Ashley.

Arthur v. Beales.

Whitmore v. Walker.

Gathercole v. Miall.

Bennett v. Buil.

Crest v. Clark.

Sladden and another v. Jennings.

## SPECIAL CASES.

*For Michaelmas Term, 1847.*

## For Judgment.

Wilson v. Eden, Bt., and others.

(Heard 4th June, 1847.)

Hall v. Lack.

(Heard 11th June 1847.)

## For Argument.

Baddeley, clk. v. Gingell, by order of Baron Parke.

Doe d. Burton v. White, by order of Nisi Prius.

Doe d. Knight v. Spencer, Ditto.

Harries v. Hooper, Ditto.

Lee v. Stone and others, by order of V. C. Knight Bruce.

Taylor v. Dawson, Esq., by order of Nisi Prius.

Salkeld, clk. v. Johnston and others, by order of the Lord Chancellor.

Galloway and another v. Cole, by order of Nisi Prius.

Ramsbottom v. Duckworth and another, by rule of court.

Marsh v. Davies and others, by order of Nisi Prius.

South Eastern Railway Company v. Pickford and others, by order of Baron Alderson.



Tobin, Knt, v. Simpson, exor., &c., by order of Justice Erle.  
 Morgan, admix., &c., v. Jeffreys, by order of Justice Erle.  
 Molton and wife, admix., &c., v. Camroux, sec. &c., special verdict.  
 Belcher and others, assignees, &c., v. Bellamy and another, exors., &c., by order of Baron Alderson.  
 Hamilton and others v. Spottiswoode, by order of Baron Parke.  
 Graham and others, assignees, &c., v. Allsop, by order of Baron Alderson.  
 Shiell v. Ward and others, by order of Nisi Prius.  
 Doe d. Knight v. Samson and others, by order of Nisi Prius.  
 Furness and another v. Law, by order of Nisi Prius.  
 The Royal Mail Steam Packet Company v. Acraman and others, by order of Nisi Prius.

NEW TRIAL PAPER.

For Michaelmas Term, 1847.

FOR ARGUMENT.

Moved Easter Term, 1847.

Middlesex, Lord Chief Baron.—Hitchcock, administrator, &c. v. Beavan—Mr. Martin.  
 London, Lord Chief Baron.—Mason v. Owen and others—Attorney-General.  
 London, Lord Chief Baron.—Ralli v. Denistown and others—Attorney-General.  
 London, Lord Chief Baron.—Entwistle and another v. Dent and others—Sir F. Kelly.  
 London, Lord Chief Baron.—Hesletine v. Siggers—Mr. Crowder.  
 London, Lord Chief Baron.—Ollive v. Booker—Mr. Crowder.  
 London, Lord Chief Baron.—Ollive v. Booker—Mr. Watson.  
 London, Lord Chief Baron.—Green and others, assignees, v. Laurie, Knt., and others—Mr. Martin.  
 London, Lord Chief Baron.—Alexander and another v. Booker—Mr. Watson.  
 London, Lord Chief Baron.—Barber, on affidavits, v. Grace—Mr. Whitehurst.  
 London, Lord Chief Baron.—Pell v. Jones—Serjeant Allen.  
 London, Lord Chief Baron.—Phillips and another (on affidavit) v. Fisher—Mr. James.  
 Liverpool, Mr. Baron Rolfe.—Bayliffe v. Butterworth—Mr. Knowles.  
 Liverpool, Mr. Baron Rolfe.—Caine v. Horsfall—Mr. Martin.  
 Liverpool, Mr. Baron Rolfe.—Broadbent and others v. Fernley and another—Mr. Martin.  
 Liverpool, Mr. Baron Rolfe.—Whitwell v. Harrison—Mr. Watson.

Gloucester, Mr. Justice Maule.—Christy and others (on affidavits) v. Powell and others—Mr. Whateley for defendant Pidgeon.

Lewes, Lord Chief Justice Wilde.—Biddle, executor, &c., v. Biddle.—Serjeant Shee.

Kingston, Lord Denman.—Hooper and another v. Williams—Serjeant Channell.

Kingston, Lord Denman.—Boileau v. Rudlin—Serjeant Shee.

Kingston, Lord Denman.—Robinson v. Harman—Mr. Chambers.

Kingston, Lord Denman.—Newry and Enniskillen Railway Company v. Edmonds—Mr. Bramwell.

Chester, Mr. Justice Williams.—Bates v. Townley and another—Mr. Welsby.

Chester, Mr. Justice Coltman.—Bates v. Townley and another—Mr. Townshend.

Cardigan, Mr. Justice Wightman.—Doe d. Lewis v. Lewis—Mr. Beaman.

Winchester, Mr. Justice Cresswell.—Newlyn v. Shadwell—Mr. Cockburn.

Dorset, Mr. Justice Cresswell.—Saint (on affidavit) v. Cox—Mr. Cockburn.

Taunton, Mr. Justice Williams.—Wait and another v. Baker—Mr. Crowder.

Taunton, Mr. Justice Williams.—Wait and another v. Baker—Mr. Butt.

Moved after the 4th day of Easter Term, 1847.

Middlesex, Mr. Baron Alderson.—Wilkins v. Grant—Mr. Crowder.

London, Mr. Baron Alderson.—Chapman v. Geiger—Mr. Bramwell.

Moved Trinity Term, 1847.

Middlesex, Mr. Baron Parke.—Manning v. Bailey—Mr. Chambers.

Middlesex, Mr. Baron Parke.—Jacobs v. Hyde—Mr. Hake.

London, Lord Chief Baron.—Chilton v. The London and Croydon Railway Company—Mr. Hill.

## MEETING OF PARLIAMENT.

THE new parliament will assemble "for the dispatch of business" on the 18th of November.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Sept. 21st, to Oct. 22nd, 1847, both inclusive, with dates when gazetted.

Beetham, Francis, and Charles Foulger, 2, Tanfield Court, Temple, Attorneys and Solicitors. Oct. 15.

Cooper, William Bush, and George William Whitaker, 17, Hatton Garden, Bampton, and Witney, Solicitors. Oct. 1.

Cornthwaite, Daniel, and John Hilditch Adams, 14, Old Jewry Chambers, Attorneys. Oct. 5.

Lamb, Henry, and Henry John Nettleship, Kettering, Attorneys and Solicitors. Sept. 24.

Newstead, Charles, and Wormley Edward Richard, son, Selby, Attorneys and Solicitors. Sept. 28.

Terrell, James, Bartholomew Yard, Exeter, Solicitor, and Edward Hunt Roberts, late of the same place, but now of 170, Fore Street Exeter, Solicitor and Conveyancer. Oct. 15.

Wilkinson, Josiah, and Oswald Lee Rasch, 2, Nicholas Lane, Lombard Street. Oct. 1.

## THE EDITOR'S LETTER BOX.

The improvements lately announced, in regard to the Reports of Recent Decisions, and the more convenient arrangement of the Contents of the Work, will commence next week with the New Volume. The Reports, Analytical Digest of Cases, New Rules and Orders, Cause Lists, Sittings, and Special Business of the Courts, will be classified together in the latter part of each Weekly Number: thus affording the greatest facility of reference. The first part will contain the Parliamentary or Legislative matter, and all Original Articles and Dissertations.

The title page and contents of Vol. 34 will accompany the next number.

# NAMES OF CASES

## REPORTED AND DIGESTED.

	PAGE.		PAGE.
Abbott v. Clarke, 2 C. & R. 209 ..	324	Bayley v. Buckland, 34 L. O. 279 ..	404
-v. Richards, 3 D. & L. 487 ..	533	Beaucherk v. Ashburnham, 8 Beav. 322 ..	77
Ackermann v. Ehrensperger, 16 M. & W. 99	530	Beard v. Egerton, 3 C. B. 97 ..	533
Alexander v. Osborne, 34 L. O. ..	201	Beavan v. Gibert, 8 Beav. 308 ..	178
Allen v. Knight, 5 Hare, 272 ..	78	Beazley v. Bailey, 4 D. & L. 271; 16 M. & W. 58 ..	618, 619
Alexander v. Williams, 4 D. & L. 132 ..	603	Benham v. Earl of Mornington, 4 D. & L. 213, 3 C. B. 133 ..	550
Allen v. Henderson, 5 Hare, 163 ..	57	Bentley v. Carver, 2 C. B. 817 ..	378
Allott v. Bearcroft, 4 D. & L. 327 ..	616	Benton v. Polkinghorne, 16 M. & W. 8 ..	377
Alport v. Nutt, 1 C. B. 974 ..	531	Bennett, in re, 8 Beav. 467 ..	225
Amies v. Skillern, 14 Sim. 428 ..	58	— v. Burgis, 5 Hare, 295 ..	132
Anon., 8 Beav. 314 ..	178	Berkeley v. De Vere, 4 D. & L. 97 ..	617
— 34 L. O. ..	493, 597	Berney v. Read, 7 Q. B. 79 ..	495
— 1 De Gex, 334 ..	269	Bessell v. Landsberg, 7 Q. B. 638 ..	515
— 33 L. O. 141 ..	9	Beynon v. Jones, 15 M. & W. 566 ..	603
Arbouin, ex parte, 1 De Gex, 359 ..	272	Biddulph v. Lord Conrovs, 32 L. O. 372 ..	9
Archer v. Hudson, 8 Beav. 321 ..	31	Billing v. Coppock, 34 L. O. 159 ..	377
— v. Williams, 2 C. & K. 26 ..	325	Bird v. Defonvielle, 2 C. & K. 415 ..	324
Armstrong v. Stocken, 33 L. O. 405 ..	9	— v. Jones, 7 Q. B. 742 ..	530
Arnold v. Arnold, 34 L. O. 61; 33 L. O. 566	149, 173	Black v. Lowe, 4 D. & L. 285 ..	616
Ashby v. Bates, 4 D. & L. 33; 15 M. & W. 589 ..	618	Blaggrave v. Blaggrave, 34 L. O. ..	180
Ashton v. Dalton, 2 Coll. 565 ..	75	Blenkinsopp v. Blenkinsopp, 8 Beav. 612	174, 178
— in re, 7 Q. B. 169 ..	351	— 2 Phill. 1 ..	175
Aston v. Parkes, 15 M. & W. 385 ..	570	Blomfield v. Eyre, 8 Beav. 250 ..	129
Atkins v. Humphrey, 3 D. & L. 612 ..	513	Bode, Baron de, in re, 2 Phill. 85 ..	200
Atkinson v. Hornby, 2 C. & K. 429 ..	324	Boosey v. Davidson, 4 D. & L. 147 ..	426
Atlee v. Gibson, 34 L. O. ..	547	Booth v. Millns, 15 M. & W. 669; 4 D. & L. 52 ..	618
Attorney-General v. Bailey, 16 M. & W. 74	427	Bottomley v. Buckley, 4 D. & L. 157 ..	495
— v. Brickdale, 8 Beav. 223 ..	173	Boulton v. Pritchard, 4 D. & L. ..	117
— v. Gardner, 2 Coll. 564 ..	178	Bousfield v. Edge, 34 L. O. ..	493
— v. Gell, 8 Beav. 362 ..	175	— v. Mould, 34 L. O. ..	597
— v. London, Corporation of, ..	102	Bowditch v. Toulmin, 34 L. O. 230 ..	618
8 Beav. 270 ..	60	Bowers v. Nixon, 2 C. & K. 372 ..	327
— v. Malkin, 2 Phill. 64 ..	227	Bowler, ex parte, 1 De Gex, 343 ..	270
— v. Pearson, 2 Coll. 581 ..	176	Bownes v. Marsh, 34 L. O. ..	359
— v. Prettyman, 8 Beav. 316 ..	150	Bowman v. Bell, 14 Sim. 392 ..	177
— v. Rickards, 8 Beav. 380 ..	101	Bowyer v. Cook, 34 L. O. 106 ..	579
— v. Worcester, Corporation ..	101	Boyd v. Moyle, 2 C. B. 644 ..	530
of, 2 Phill. 3 ..	327	Boydell v. Golightly, 14 Sim. 327, 328 ..	59, 60
Bagnall v. Whitehouse, 33 L. O. 283 ..	150	— v. Harkness, 3 C. B. 168; 4 D. & L. 178 ..	551
Bailey v. Forrest, 2 C. & K. 131 ..	226	Bracey, in re, 8 Beav. 266, 338 ..	10
Baily v. Lambert, 5 Hare, 178 ..	133	Braham v. Watkins, 4 D. & L. 42; 16 M. & W. 77 ..	551, 555-6
Bainbrigg v. Blair, 8 Beav. 588 ..	102, 150	Braughan, in re, 33 L. O. 378 ..	270
Baker v. Sowter, 34 L. O. ..	358	Breeze v. Hawker, 14 Sim. 350 ..	200
— v. Wetton, 14 Sim. 426 ..	75	Bridson v. M'Alpine, 8 Beav. 229 ..	175
Baldwin v. Damer, 34 L. O. ..	618	Britt v. Pashley, 34 L. O. ..	511
Bamford v. Bamford, 5 Hare, 203 ..	404	Bromage v. Lloyd, 34 L. O. ..	441
Balman v. Sharp, 16 M. & W. 93 ..	177, 201	— v. Vaughan, 33 L. O. 188 ..	527, 405
Barnett v. Lambert, 15 M. & W. 489 ..	405	Brocklebank v. Whitehaven Railway Company, 34 L. O. ..	381
Barker v. Harrison, 2 Coll. 546 ..	531	Brooke, Lord, v. Rounthwaite, 5 Hare, 298 ..	77
— v. Stead, 33 L. O. 455 ..	177	Bromage, ex parte, 1 De Gex, 375 ..	271
Barnacle v. Nightingale, 14 Sim. 456 ..	247	Brown v. Cole, 14 Sim. 437 ..	75
Barlow v. Browne, 16 M. & W. 126 ..	325	— v. Home, 8 Beav. 607 ..	151
— v. Gains, 8 Beav. 329 ..	272	— v. Lake, 2 Coll. 620 ..	149
Barnett, in re, 4 Moore, 453 ..	8		
Barrett v. Blunt, 2 C. & K. 271 ..			
Barton, ex parte, 1 De Gex, 316 ..			
Bateman, ex parte, 6 Q. B. 853 ..			

			PAGE.
Brown, in re, 33 L. O. 586	..	175	Cooke v. Turner, 14 Sim. 493 .. 60
— v. Robertson, 2 Phill. 173	..	175	— v. Henson, 1 C. B. 908 .. 530
— 33 L. O. 301	..	178	— v. Blake, 33 L. O. 94; 4 D. & L. 313
— v. Home, 33 L. O. 255	..	177	Coombe v. Chapman, 33 L. O. 376, 405
— v. Wilkinson, 15 M. & W. 39	..	446	— v. Ramsay, 2 Phill. 168 .. 173
— v. Thurlow, 16 M. & W. 36; 4 D. & L. 301	..	572	Goombes v. Ramsay, 33 L. O. 303, 375 .. 173
— v. Gill, 2 C. B. 861.	..	602	Cooper v. Brockett, 4 Moore, 419 .. 249
Browne v. Stoughton, 14 Sim. 369	..	60	— v. Shepherd, 4 D. & L. 218 .. 573
Buchanan, ex parte, 1 De Gex, 344	..	271	— v. Webb, 33 L. O. 376 .. 151
Bull v. Falkner, 34 L. O. ..	..	79	Cope v. Russell, 34 L. O. .. 250, 277
— 33 L. O. 525	..	174	Cork and Bandon Railway Co. v. Cazenove, 34 L. O. .. 464
Bulmer v. Bousfield, 34 L. O. 35	..	571	Corry v. Curlew, 8 Beav. 606 .. 150
Burbidge, ex parte, 1 De Gex, 256	..	271	Coulsting v. Coulsting, 8 Beav. 463 .. 151
Burkitt v. Ransom, 2 Coll. 536	..	224	Craig v. Watson, 8 Beav. 427 .. 225
Bushell v. Boord, 4 D. & L. 359	..	425, 618	Crockett v. Crockett, 5 Hare, 326 .. 59
Butchart v. Dresser, 33 L. O. 549	..	176	Crofts v. Brown, 7 Q. B. 234 .. 602
Butcher v. Jackson, 14 Sim. 444	..	76	Croker v. Marquis of Hertford, 4 Moore, 339
Butterfield, ex parte, 1 De Gex, 319	..	273	Cross v. Cross, 8 Beav. 455 .. 129
Burrows v. Gabriel, 4 D. & L. 107	..	601	Curling v. Flight, 5 Hare, 244, 248 .. 77, 150
Bury v. Peers, 4 D. & L. 163	..	619	Curtis v. Robinson, 8 Beav. 242 .. 31
Butterworth v. Williams, 4 D. & L. 82	..	615	Cunliffe, ex parte, 3 D. & L. 348 .. 8
Caine v. Horsfall, 2 C. & K. 349	..	322	Culverwell v. Nugee, 4 D. & L. 30; 15 M. & W. 559 .. 444, 601
Cameron v. Wynch, 2 C. & K. 264	..	327	Cutts v. Surridge, 4 D. & L. 373 .. 377
Camoy, Lord, v. Blondell, 34 L. O. ..	..	274	Cumming v. Bedfordborough, 15 M. & W. 438 .. 514
Canterbury, Viscount, in re, 2 Phill. 85	..	200	Dalby, in re, 8 Beav. 469 .. 226
Carven, in re, 8 Beav. 436	..	226	Dalrymple v. Fraser, 2 C. B. 693 .. 535
Capes v. Jones, 2 C. B. 911	..	446	Damer v. Earl of Portarlington, 2 Phill. 30 .. 132
Carlton v. Farlar, 8 Beav. 525	..	174	Daniel v. Newton, 8 Beav. 485 .. 229
Carpenter v. Butt, 34 L. O. ..	..	439	— v. Fielding, 4 D. & L. 329 .. 550
Cattrell v. Simons, 8 Beav. 243	..	128	Davenport v. Stafford, 8 Beav. 503 .. 130
Carmichael v. Carmichael, 2 Phill. 101	..	127	Davis, ex parte, 1 De Gex, 267 .. 271
Cazenove v. Boazman, 14 Sim. 352	..	200	— v. Lord Combermere, 14 Sim. 402 .. 176
Chameau v. Riley, 8 Beav. 269	..	131	Dawson v. Cropp, 1 C. B. 961 .. 514
Chantler v. Lindsay, 4 D. & L. 339; 16 M. & W. 82	..	555	— v. Morrison, 34 L. O. 230 .. 405
Chapman v. King, 4 D. & L. 311	..	572	— v. Gregory, 7 Q. B. 756 .. 466
Chappell v. Purday, 34 L. O. ..	..	103	Day v. Reggel, 33 L. O. 329 .. 178
Charlesworth v. Ellis, 7 Q. B. 678	..	574	— v. Sharpe, 33 L. O. 543 .. 405
Chilton v. London and Croydon Railway Company, 33 L. O. 479	..	404	Dean v. Regina, 15 M. & W. 475 .. 529
Christie v. Eell, 34 L. O. 136	..	601	Denning v. Henderson, 33 L. O. 354; 34 L. O. 493 .. 78
Cheeseborough, ex parte, 1 De Gex, 333	..	269	Dering, ex parte, 33 L. O. 356 .. 273
Christian v. Foster, 2 Phill. 161	..	227	Derosne's patent, in re, 4 Moore, 416 .. 248
— 33 L. O. 209	..	31	Dick v. Lacy, 8 Beav. 214 .. 59
Christopher v. Cleghorn, 8 Beav. 314	..	178	Dickinson v. Eyre, 7 Q. B. 307, n. .. 444
Christ's Hospital v. Attorney-General, 5 Hare, 257	..	149	Dietrichsen v. Cabburn, 2 Phill. 52 .. 77
Chuck v. Cremer, 2 Phill. 113	..	173	Dimsdale v. Robertson, 2 J. & L. 58 .. 496
Clark v. Dann, 3 D. & L. 513	..	33	Dingwall v. Hemming, 33 L. O. 428 .. 224
— v. Dunsford, 2 C. B. 724	..	619	Dixon v. Sleddon, 15 M. & W. 427 .. 616
— v. Hall, 8 Beav. 395	..	201	Doe d. Bailey v. Foster, 3 C. B. 215 .. 515
— v. Chaplin, 34 L. O. ..	..	567	— Bayes v. Roe, 16 M. & W. 98 .. 404
— v. Newsam, 34 L. O. ..	..	205	— Bedford Charity v. Payne, 7 Q. B. 287
Clarke v. Clarke, 34 L. O. ..	..	440	— Burgess v. Roe, 4 D. & L. 311 .. 602
— v. Mayor, &c. of Derby, 33 L. O. 165	..	9	— Body v. Cox, 32 L. O. 189; 4 D. & L. 75 .. 494
Clements v. Beresford, 32 L. O. 448	..	131	Cundy v. Sharpley, 15 M. & W. 558 .. 513
— v. Flight, 4 D. & L. 261; 16 M. & W. 42	..	554	Egremont, Lord, v. Williams, 7 Q. B. 686 .. 617
Clutterbuck v. Hulls, 4 D. & L. 80	..	377	— Farmery v. Roe, 34 L. O. .. 81
Cobbett, in re, 7 Q. B. 187	..	442	— Hull v. Wood, 15 M. & W. 682 .. 514
— v. Oldfield, 33 L. O. 551	..	377	— Fleming v. Somerton, 7 Q. B. 58 .. 467
Cocks, ex parte, 34 L. O. 37	..	272	— Gaisford v. Stone, 3 C. B. 176 .. 467
— v. Purday, 2 C. & K. 269	..	323	— Gorst v. Timothy, 2 C. & K. 351 .. 324
Collins v. Hopwood, 15 M. & W. 459	..	425	— Haw v. Earles, 13 M. & W. 450 .. 513
Colchester, Mayor of, v. Brooke, 7 Q. B. 339	..	515, 528, 569	— Hemming v. Barratt, 34 L. O. .. 251
Coldham v. Showler, 2 C. & K. 261	..	324	— Hutchinson v. Manchester Railway Company, 2 C. & K. 162 .. 325
Columbine v. Chichester, 2 Phill. 27	..	150	— Loscombe v. Cliford, 2 C. & K. 448
Congreve, ex parte, 1 De Gex, 267	..	273	— Phillips v. Rollings, 2 C. B. 842 .. 376
Conolly v. Farrell, 8 Beav. 347	..	56	— Pugh v. Price, 33 L. O. 355 .. 34
Connor v. Connor, 34 L. O. ..	..	420	— Stace v. Wheeler, 15 M. & W. 623 .. 514
Cooke, in re, 7 Q. B. 653	..	603	— Wood v. Clarke, 7 Q. B. 211 .. 514

Doe d. Wood v. Wilkins, 2 C. & K. 328	495	Forth Marine Insurance Company, in re, 1 De	271
Lloyd v. Roe, 15 M. & W. 431	602	Gex, 355	271
— v. Ingleby, 15 M. & W. 465	514	Foster v. Bank of England, 6 Q. B. 878	39
Mayor of Richmond v. Morphett, 7 Q. B.	515	Fraser v. Wood, 8 Beav. 329	7
577	515	Freeman v. Gray, 33 L. O. 452	14
Rabbits v. Welch, 4 D. & L. 115	594	Freer v. Rimmer, 14 Sim. 391	31, 78
Piggott v. Roe, 4 D. & L. 88	602	Fullarton v. Mittelholzer, 6 Q. B. 1022	534
Mostyn v. Eyton, 33 L. O. 527	603	Gale v. Chubb, 33 L. O. 355	378
Farmery v. Roe, 34 L. O. 81	602	Garrard v. Lord Dinorben, 5 Hare, 213	127
D'Orliac v. D'Orliac, 4 Moore, 374	247	Gascoyne v. Lamb, 34 L. O.	525
Bowden v. Hook, 8 Beav. 399	176	Gatland v. Tanner, 34 L. O. 34, 276	174
Dowman v. Williams, 7 Q. B. 103	526	Gee v. Garney, 2 Coll. 486	139
Drake v. Pickford, 15 M. & W. 607	519	— v. Gurney, 8 Beav. 315	201
Dresser v. Morton, 34 L. O.	509	Gibbons v. Alison, 3 C. B. 181	617
Druce v. Denison, 34 L. O.	275	Gibert v. Hales, 8 Beav. 236	128
Drury v. Macaulay, 16 M. & W. 146	535	Giddings v. Giddings, 33 L. O. 501	32
Duncan v. Varty, 14 Sim. 393	177	Giles v. Cornfoot, 34 L. O. 13	405
— v. Louch, 6 Q. B. 904	516	Gilham, in re, 33 L. O. 378	270
Duncombe v. Levy, 5 Hare, 232	152, 151	Giraud v. Richmond, 2 C. B. 835	427
Dunlop v. Grote, 2 C. & K. 153; 33 L. O. 284	32, 326	Glover, in re, 34 L. O.	644
Dunning v. Hards, 34 L. O.	327	Goldie v. Greaves, 14 Sim. 348	58
Dyer v. Disney, 34 L. O. 231	601	Gompertz v. Gompertz, 2 Phill. 107	59
— v. Green, 34 L. O.	525	Goodal v. Lowndes, 32 L. O. 589	351
Eager v. Grimwood, 34 L. O.	360	Gonne, exparte, 1 De Gex, 359	272
Earle v. Holt, 5 Hare, 180	151	Goodman v. Kine, 8 Beav. 379	132
Eddison v. Pigram, 16 M. & W. 137; 4 D. & L. 277	551, 570	Good v. Burton, 34 L. O.	423
Edge v. Duke, 34 L. O. 11	149	Goodwin v. Gosnell, 2 Coll. 457, 462	224, 225
Edmunds v. Pinniger, 7 Q. B. 558	572	Gordon v. Ellis, 2 C. B. 821	571
Edwards v. Abrey, 2 Phill. 37	131	— v. Shaw, 14 Sim. 393	149
Edgington v. Banham, 2 Coll. 619	152	— v. Lowe, 34 L. O.	420
Egg v. Devey, 34 L. O.	565	Gosling v. Veley, 7 Q. B. 406	332
Eldrid v. Whitefoot, 34 L. O.	524	Gover, exparte, 1 De Gex, 349	270
Ely, Dean of, &c., v. Cash, 15 M. & W. 617	444	Gowar v. Bennett, 34 L. O.	328
Ellis v. Griffith, 4 D. & L. 279; 16 M. & W. 106	601-3	Grafton v. Armitage, 2 C. B. 337	535
Emmott v. Mitchell, 14 Sim. 432	151	Graham, exparte, 1 De Gex, 828	371
Engleheart v. Moore, 4 D. & L. 60	376	— v. Lynes, 7 Q. B. 491	424
Esdaile v. Maclean, 15 M. & W. 277	551, 571	— v. Witherby, 7 Q. B. 491	424
Evans v. Crosbie, 34 L. O.	301	— v. Sanderelli, 4 D. & L. 317	601
— v. Jones, 2 Coll. 316	58, 60	Green v. Pertwee, 5 Hare, 249	58
— v. Watson, 4 D. & L. 193	379	— v. Wood, 7 Q. B. 178	448
Exeter and Crediton Railway Company v. Buller, 34 L. O. 180	404	Greenstock, exparte, 1 De Gex, 230, 231	269, 270, 271
Eyre v. Green, 2 Coll. 527	75	Greenwood v. Churchill, 8 Beav. 413	75
Fairthorne, in re, 3 D. & L. 548	10	Grenfell v. Edgecome, 7 Q. B. 661	495
Farina v. Home, 16 M. & W. 119	428	Gregory v. East India Company, 7 Q. B. 199	535
Farquhar v. East India Company, 8 Beav. 260	199	Griffith v. Ricketts, 5 Hare, 195	225
Fearne v. Cockrane, 34 L. O. 81	554	Griffiths v. Lewis, 7 Q. B. 61	534
Fell, in re, 3 D. & L. 373	443	— v. Thomas, 4 D. & L. 109	379
Fenn v. Edmunds, 5 Hare, 314	101	Gurney v. Seppings, 2 Phill. 40	76
Fentiman v. Fentiman, 34 L. O.	381	Guyard v. Sutton, 3 C. B. 153	553
Ferrand v. Milligan, 7 Q. B. 730	468	Hadrick v. Heslop, 34 L. O.	583
Fenwick v. Greenwell, 34 L. O.	545	Haigh v. Paris, 4 D. & L. 325; 16 M. & W. 144	618
— v. Boyd, 15 M. & W. 632	528	Hall, exparte, in re Carey, 34 L. O.	599
Finden v. Stephens, 33 L. O. 186	132	— v. Austin, 2 Coll. 570	173
— 2 Phill. 142	60	— v. Barrett, 33 L. O. 258	466
Findley v. Farquharson, 4 D. & L. 185	378	— exparte, 1 De Gex, 352	469
Findon v. MacLaren, 6 Q. B. 291	514	Hammond v. Colls, 3 C. B. 212	449
Flight v. Maclean, 16 M. & W. 51	570	— v. Dayson, 15 M. & W. 373	570
Fisher v. Fisher, 34 L. O.	597	Hanby v. Fisher, 2 Coll. 512; n.	59
Flack v. Longmate, 8 Beav. 420	75	Handley v. Edwards, 4 Moore, 407	247
Flight v. Marriott, 34 L. O.	132	Handford v. Handford, 5 Hare, 212	199
Flint v. Warren, 34 L. O.	546	Hankinson v. Biley, 2 C. & K. 440	326
Foley v. Botfield, 16 M. & W. 65; 4 D. & L. 328	378	Harbridge v. Wogan, 5 Hare, 258	76
Follett, exparte, 1 De Gex, 212	270	Hargrave v. Hargrave, 8 Beav. 289	176
Fooks v. Wilts, Somerset, and Weymouth Rail- way Company, 5 Hare, 199	102	Hare, in re, 33 L. O. 550	9
Fowler v. Ward, 8 Beav. 438	1403	Harris v. Reynolds, 7 Q. B. 71	550
Foad, in re, 34 L. O. 277	577	— v. Robinson, 2 C. B. 908	501
Gray, 33 L. O. 355	149	Harrison v. Watt, 33 L. O. 456	32
		— in re, 33 L. O. 404	10
		— v. Ruscoe, 15 M. & W. 231	526
		Hart v. Middleton, 2 C. & K. 9	325
		Hartley v. Cummings, 2 C. & K. 453	323
		Harvey v. Bignold, 8 Beav. 543	151

	AAGE.		PAGE.
Harvey v. Mount, 8 Beav. 439	31	Johnstone v. Baber, 8 Beav. 253	38
Harwich Railway, in re, 34 L. O. 104	405	Jones v. Fawcett, 34 L. O.	406, 611
Hassell v. Watson, 2 C. & K. 141	323	— exparte, 1 De Gex, 345	471
Hastings, exparte, 1 De Gex, 219	270	— in re, 8 Beav. 479	226
Hawks v. Howard, 34 L. O.	613	— v. Mitchell, 34 L. O.	564
Hayward v. Bennett, 4 D. & L. 222	552	Jordan v. Jones, 2 Phill. 170	131
Healy v. Young, 2 C. B. 702	468	Jorden v. Jones, 33 L. O. 254	75
Heanley v. Abraham, 5 Hare, 214	150	Jowett v. Spencer, 15 M. & W. 662	552
Henbury, exparte, 33 L. O. 467	31	Jubb v. Ellis, 3 D. & L. 364	618
Henry v. Goldney, 15 M. & W. 494; 4 D. & L. 6	548	Kearsley v. Cole, 16 M. & W. 128	533
Higgins v. Ede, 3 D. & L. 470	33	Kelsall, exparte, 1 De Gex, 352	272, 275
Hills v. Croll, 2 Phill. 60	77	Kemp v. Watt, 15 M. & W. 672; 4 D. & L. 21	549, 571-5
— v. Nash, 34 L. O.	596	Kent, Sheriff of, in re, 2 C. & K. 197	322
Hinton v. Acraman, 3 D. & L. 426	551	Kerakoose v. Serle, 4 Moore, 459	248
Heming v. Archer, 8 Beav. 294	103	Kewley v. Stokes, 2 C. & K. 435	322
— v. Swinnerton, 2 Phill. 79	101	Keys v. Harwood, 2 C. B. 905	553
Hitch v. Wells, 8 Beav. 576	175	Kidd v. North, 14 Sim. 463	57
Hide v. Thornborough, 2 C. & K. 250	322	— 2 Phill. 91	58
Hills v. Kitching, 2 C. & K. 278	322, 323	Kilmer v. Leach, 34 L. O.	380
Hilton v. Lord Granville, 34 L. O. 134; 33 L. O. 500	151, 617	King v. Birch, 7 Q. B. 669	615
Hobson v. Shearwood, 8 Beav. 486	224	— v. Simmonds, 7 Q. B. 289	427
Hodges v. Toplis, 2 C. B. 921	617	— v. Wright, 14 Sim. 400	59
Hodson, exparte, 1 De Gex, 374	269	Kinning, in re, 34 L. O.	252
— 33 L. O. 260	273	— 16 M. & W. 66	447
— v. Harris, 33 L. O. 139	127	Knight v. Barber, 2 C. & K. 333	326
Hollier v. Lawrie, 4 D. & L. 203	444	— v. Morrall, 14 Sim. 398	200
Holloway v. Turner, 6 Q. B. 928	32	— v. Waterford, Marquis of, 15 M. & W. 419	447
Holder v. Cope, 2 C. & K. 437	323	Knill v. Chadwick, 34 L. O.	251, 545, 564
— v. Liverpool Gas Company, 3 C. B. 1	466	Lambe v. Smythe, 15 M. & W. 433	548
Holcombe v. Antrobus, 8 Beav. 405	177	Lamert v. Heath, 15 M. & W. 486	404
Holmes v. Carden, 33 L. O. 503	495	Lamont v. Primavesi, 34 L. O.	203
Holroyd v. Wyatt, 2 Coll. 537	76	Landor v. Parr, 34 L. O. 33	225
— 33 L. O. 550	78	Lane, exparte, 1 De Gex, 300	273
Hooper v. Treffry, 34 L. O.	614	Langley v. Fisher, 33 L. O. 283	177
Hopkins v. Prescott, 34 L. O.	329	Lautour v. Holcombe, 34 L. O.	104
— v. Richardson, 33 L. O. 70	525	Langston v. Cozens, 34 L. O.	420
Hopkinson v. Lee, 6 Q. B. 964	512	Langton, exparte, 34 L. O.	510
Howard v. Danbury, 2 C. B. 803	466	Larpent v. Richmond Railway Company, 33 L. O. 91	32
— v. Gash, 32 L. O. 396	151	Lawrence, exparte, 1 De Gex, 269	272
— v. Prince, 34 L. O.	153	— v. Bowle, 2 Phill. 140	224
— in re, 8 Beav. 424	226	Law, exparte, 1 De Gex, 378	269
Hughes v. Williams, 34 L. O.	35	— v. Thompson, 15 M. & W. 541; 4 D. & L. 54	617
— 33 L. O. 566	176, 178	Lee v. Simpson, 33 L. O. 478	426
— 5 Hare, 211	149	Leads, Duke of, v. Lord Amherst, 14 Sim. 357, 2 Phill. 117	33, 103, 132
Huggins v. Waydey, 15 M. & W. 357	443	Leicestershire Banking Company, exparte, 1 De Gex, 292	271
Hurley v. Baker, 16 M. & W. 26	531	Lewis v. Damer, 34 L. O.	300
Hulme v. Chitty, 34 L. O.	300	— v. Cooper, 33 L. O. 45, 283, 451	151, 174,
Humberston, in re, 1 De Gex, 262	273	— v. Hinton, 34 L. O. 10	175
Humphrey v. Lucas, 2 C. & K. 152	322	Lee v. Melendez, 33 L. O. 501	177
Hungate v. Gascoyne, 2 Phill. 25	201	Lipscombe v. Turner, 4 D. & L. 125	376
Hunter v. Caldwell, 34 L. O. 11	377	Lister v. Turner, 5 Hare, 281	102
Hutchinson v. Gillespie, 4 Moore, 378	247	Littlechild v. Banks, 7 Q. B. 739	569
Hyams, exparte, 34 L. O.	548	Liverpool, Corporation of, v. Morris, 34 L. O.	301
Iderton v. Sill, 2 C. B. 249	32	Lloyd v. Berkovitz, 16 M. & W. 31	619
Irving v. Manning, 34 L. O. 298; 2 C. B. 784	530	Lockwood v. Abdy, 14 Sim. 437	150
Ivimey v. Marks, 34 L. O. 107	376	Lomax v. Kilpin, 34 L. O.	601
Jackson v. Smithson, 15 M. & W. 563; 4 D. & L. 45	553	Love v. Gaze, 8 Beav. 472	57
James v. Boston, 2 C. & K. 4	297	Lord v. Wightwick, 2 Phill. 110	127
— v. Brook, 34 L. O. 105	578	Lovell v. Andrew, 34 L. O.	79, 301
— v. Buckle, 34 L. O.	227	Lowe v. Steele, 15 M. & W. 38	570
— v. Crane, 15 M. & W. 379	618	Lowell, exparte, 33 L. O. 527	269
Jefferies v. Yablouski, 2 C. B. 924	616	Luard v. Butcher, 2 C. & K. 29; 2 C. B. 858	323, 354
Jenkins v. Gower, 2 Coll. 537	57	McDonnell v. Alcock, 8 Ir. Eq. Rep. 127	174
— v. Jenkins, 34 L. O.	379	McEwen v. Woods, 2 C. & K. 336	326
Jennings v. Hill, 4 Moore, 369	248	McMahon v. Burchell, 2 Phill. 127; 33 L. O. 234; 5 Hare, 322, 325	32, 77, 174, 200
Jerwood, exparte, 1 De Gex, 373	271		
Johnson v. Tucker, 34 L. O.	228		
— 33 L. O. 476	177		
— v. Barnes, 33 L. O. 567	178		
Johnston v. Todd, 8 Beav. 489	31		

	PAGE.		PAGE.
McNeill v. Williams, 34 L. O. ..	203	Pattison v. Hawksworth, 34 L. O. 34 ..	201
Matthand v. Irving, 33 L. O. 256 ..	129	Paul v. Dodd, 2 C. B. 800 ..	828
Mander, in re, 6 Q. B. 867 ..	9	Peake v. Screech, 7 Q. B. 603 ..	445
Manning v. Lunn, 2 C. & K. 13 ..	326	Pender, in re, 8 Beav. 48, 299 ..	9, 225
Manton v. Roe, 14 Sim. 353 ..	31	— in re, 2 Phill. 69 ..	225
Marks v. Ridgway, 34 L. O. 255 ..	378	Penny v. Watts, 2 Phill. 149 ..	150
Marshall, in re, 1 De Gex, 273 ..	272	Perkins, in re, 8 Beav. 241 ..	9
Martin, ex parte, 34 L. O. ..	463	— v. Adcock, 14 M. & W. 808 ..	32
Martindale v. Falkner, 2 C. B. 706; 3 D. & L. 600 ..	8, 376, 444	Perry, ex parte, 1 De Gex, 377 ..	273
Massey, in re, 8 Beav. 458 ..	236	Petrie v. Dawson, 2 C. & K. 138 ..	327
Matson v. Swift, 8 Beav. 368 ..	102	Pesterre v. Willis, 33 L. O. 567 ..	131
Masterman v. Lewis, 33 L. O. 553 ..	175	Peyton v. Wood, 4 D. & L. 19; 15 M. & W. 608 ..	602
Matthews v. Chichester, 33 L. O. 403; 5 Hare, 207 ..	173, 148	Phillips v. Gibbs, 4 D. & L. 275 ..	602
Matthie v. Edwards, 2 Coll. 465 ..	32, 75, 76	Pinney v. Richardson, 34 L. O. 182 ..	601
Mayfield v. Robinson, 7 Q. B. 486 ..	447	Philpott, ex parte, 1 De Gex, 346 ..	273
Meddowcroft v. Huguenin, 4 Moore. 386 ..	248	Pickford v. Lacon, 34 L. O. 181 ..	582
Mengens v. Perry, 15 M. & W. 537 ..	618	Piggott v. Bearblock, 4 Moore, 399 ..	247
Merchant Taylors' Company, in re, 34 L. O. 438 ..	74	Pilkington v. Cook, 33 L. O. 568; 4 D. & L. 347 ..	446
Meryon v. Collett, 8 Beav. 386 ..	513	— v. Scott, 15 M. & W. 657 ..	531
Messent v. Reynolds, 3 C. B. 194 ..	406	Pointe, in re, 34 L. O. ..	133
Midland Great Western Railway v. Gordon, 34 L. O. 14 ..	532	Pongerardo, in re, 34 L. O. ..	359
Millengen v. Picken, 1 C. B. 799 ..	269	Pool v. Cowan, 33 L. O. 550 ..	526
Mitchell, ex parte, 1 De Gex, 267 ..	534	Pool, Mayor of, v. Whitt, 15 M. & W. 571 ..	566
Mittelholzer, v. Fullerton, 6 Q. B. 990 ..	226	Potts v. Dutton, 8 Beav. 493 ..	225
Mobbs, ex parte, 8 Beav. 499 ..	601	— v. Whetmore, 8 Beav. 317, 375; 33 L. O. 284 ..	101, 173, 177
Moore v. McMan 4 D. & L. 267; 15 M. & W. 95 ..	406	— ex parte, 1 De Gex, 326 ..	273
— v. Claghorn, 34 L. O. ..	444	Pott v. Eyton, 3 C. B. 32 ..	532
Morris v. Manesty, 7 Q. B. 674 ..	408	Powles v. Page, 3 C. B. 16 ..	580
Morrison, ex parte, 34 L. O. ..	151	Pratt v. Hawkins, 15 M. & W. 399 ..	444
Morris v. Morris, 33 L. O. 476 ..	32, 128	Prendergast v. Lushington, 5 Hare, 171, 177 ..	53, 173
Morse v. Tucker, 5 Hare, 79 ..	177	Preston v. Wilson, 5 Hare, 185, 194 ..	101, 128
Mostyn v. Spencer, 33 L. O. 423 ..	619	Price v. Richardson, 15 M. & W. 539 ..	580
Mullins v. Ford, 34 L. O. 63 ..	463	— v. Woodhouse, 4 D. & L. 286; 16 M. & W. 1 ..	558
Munday v. Guyer, 34 L. O. ..	555	Pryce v. Belcher, 4 D. & L. 238; 3 C. B. 58 ..	426, 529
Munden v. Duke of Brunswick, 34 L. O. 204 ..	425, 602	Purney v. Richardson, 34 L. O. ..	182
Murray v. The Queen, 7 Q. B. 700 ..	79	Pyne, in re, 34 L. O. 64 ..	272
Myers v. Weatherall, 34 L. O. ..	326	Queen v. Aston, 2 C. & K. 413 ..	295
Naish v. Brown, 2 C. K. 219 ..	322	— v. Bourdon, 2 C. & K. 366 ..	295
Neale v. Proctor, 2 C. & K. 456 ..	129, 201	— v. Brightelmstone, Inhabitants of, 7 Q. B. 549 ..	353
Nelson, E. v. Lord Bridport, 8 Beav. 547, 527 ..	59	— v. Butler, 2 C. & K. 310 ..	296
Newbolt v. Pryce, 14 Sim. 351 ..	31	— v. Bakewell, Inhabitants of, 7 Q. B. 601, n. ..	357
Newman v. Ring, 33 L. O. 90 ..	569	— v. Bartlett, 2 C. & K. 321 ..	297
Newton v. Boodle, 33 L. O. 405 ..	36	— v. Carey, 7 Q. B. 131 ..	357
— 34 L. O. ..	524	— v. Brooks, 2 C. & K. 402 ..	298
— v. Jones, 34 L. O. ..	419, 462	— v. Barrett, 2 C. & K. 343 ..	297
— v. Ricketts, 34 L. O. ..	443	— v. Carmarthenshire, Justices of, 34 L. O. ..	421
— v. Grand Junction Railway Company, 16 M. & W. 139 ..	569	— v. Cheshire, Justices of, 4 D. & L. 94 ..	616
— v. Stewart, 4 D. & L. 89 ..	227	— v. Derbyshire, Justices of, 7 Q. B. 193 ..	352
Nias, in re, 34 L. O. ..	271	— v. Dossett, 2 C. & K. 306 ..	295
Nicholls, ex parte, 1 De Gex, 331 ..	280	— v. Dowpay, 7 Q. B. 281 ..	619
Norton, ex parte, 34 L. O. ..	132	— v. Downing, 2 C. & K. 382 ..	297
Nokes v. Seppings, 2 Phill. 19 ..	568	— v. Ellet, Inhabitants of, 7 Q. B. 593 ..	356
O'Brien v. Bryant, 4 D. & L. 341 ..	435	— v. Ellis, 2 C. & K. 470 ..	297
— v. Clement, 4 D. & L. 343; 15 M. & W. 435 ..	563	— v. Gifford, 34 L. O. 228 ..	616
Oldfield v. Cobbett, 8 Beav. 292; 33 L. O. 281 ..	130, 151	— v. Glass, 2 C. & K. 395 ..	297
Ottley v. Gilby, 8 Beav. 682 ..	32	— v. Goodchild, 2 C. & K. 293 ..	294
Parker v. Dunn, 8 Beav. 497 ..	177	— v. Great Bolton, Inhabitants of, 7 Q. B. 387 ..	355
— v. Peet, 34 L. O. ..	152	— v. Greenwood, 2 C. & K. 339 ..	289
— v. Watts, 33 L. O. 283 ..	128	— v. Gregory, 7 Q. B. 274 ..	423, 619
— ex parte, 1 De Gex, 342 ..	271	— v. Greenaway, 7 Q. B. 126 ..	357
Parkhurst v. Gosden, 2 C. B. 894 ..	616	— v. Harrod, 2 C. & K. 294 ..	298
Parsons v. Muntz, 34 L. O. ..	178	— v. Haines, 2 C. & K. 368 ..	297
— v. Saxter, 2 C. & K. 266 ..	322	— v. Heywood, 2 C. & K. 352 ..	296
Pargoter v. Harris, 7 Q. B. 708 ..	371		
Pascall v. Scott, 34 L. O. ..	153		

	PAGE.		PAGE.
Queen v. Hale, 2 C. & K. 326 ..	294	Rauken v. Harwood, 5 Hare, 215 ..	120
— v. Hinks, 2 C. & K. 463 ..	298	— v. Boulton, 5 Hare, 215 ..	120
— v. Higgs, 2 C. & K. 322 ..	294	Rayner v. Grote, 15 M. & W. 359 ..	528
— v. Holcroft, 2 C. & K. 341 ..	294	Rees, ex parte, 1 De Gex, 105, 205 ..	269, 270, 273
— v. Hull Dock Company, 7 Q. B. 2 ..	355	Reeve v. Marquis of Conyngham, 2 C. & K. 414 ..	324
— v. Jones, 2 C. & K. 398 ..	298	Reeves v. Glastonbury Canal Company, 14 Sim. 351 ..	175
— v. Johnson, 2 C. & K. 354, 355, 394 ..	295, 298	Rennie v. Beresford, 3 D. & L. 464 ..	33
— v. Kelly, 2 C. & K. 379 ..	296	Repton v. Hodgson, 7 Q. B. 84 ..	442
— v. Leeds, Overseers of Township of, 33 L. O. 567 ..	351	Reynell v. Lewis, 33 L. O. 115; 15 M. & W. 517 ..	404, 405
— v. Kenilworth, Inhabitants of, 7 Q. B. 642 ..	467	Reynell v. Spry, 33 L. O. 210 ..	9
— v. Lichfield, Town Council of, 34 L. O. 104 ..	378	Reynolds, ex parte, 1 De Gex, 373 ..	271
— v. London, Mayor, &c., of, 33 L. O. 502 ..	8	— v. Fenton, 3 C. B. 187 ..	555
— v. Lilleshall, Inhabitants of, 7 Q. B. 158 ..	356	Rhodes, in re, 8 Beav. 224 ..	10
— v. Lynch, 2 J. & L. 103 ..	178	Rich v. Basterfield, 2 C. & K. 257 ..	298
— v. London, Justices of, 33 L. O. 583 ..	351	Richardson v. Chassen, 34 L. O. ..	383
— v. Marcus, 2 C. & K. 356 ..	296	— v. Moore, 33 L. O. 302 ..	178
— v. Middlesex, Registers of, 7 Q. B. 156 ..	446	— v. Tubbs, 34 L. O. ..	566
— v. Sheriff of, 15 M. & W. 146 ..	533	Rickabe v. Garwood, 8 Beav. 579 ..	180
— v. Milner, 2 C. & K. 310 ..	294	Rigby v. Great Western Railway Company, 2 Phill. 44 ..	130
— v. Mortlock, 7 Q. B. 460 ..	354	— v. Pinnock, 8 Beav. 575 ..	176
— v. North Riding, Justices of, 7 Q. B. 154 ..	356	— v. Strangways, 2 Phill. 175; 33 L. O. 282 ..	178
— v. Oldham Union, Overseers of, 34 L. O. 229 ..	352	Rigge v. Burbidge, 15 M. & W. 593; 4 D. & L. 1 ..	554
— v. Orton, Inhabitants of, 7 Q. B. 120 ..	354	Robson & Ainslie, in re, 2 Phill. 84 ..	177
— v. Painter, 2 C. & K. 319 ..	295	Robinson v. Brown, 3 C. B. 54 ..	425
— v. Paynter, 7 Q. B. 255 ..	355, 617	— v. Norton, 34 L. O. ..	542
— v. Perkin, 7 Q. B. 165 ..	426	— v. Purday, 16 M. & W. 11 ..	447
— v. Ripon, Inhabitants of, 7 Q. B. 225 ..	355	— v. Wall, 33 L. O. 303 ..	31
— v. Rothwell, Inhabitants of, 7 Q. B. 574, n. ..	351	Robertson v. Southgate, 5 Hare, 223 ..	149
— v. St. Anne's, Westminster, 7 Q. B. 241, 245 ..	355, 357	— 33 L. O. 257 ..	127
— v. St. Mary, Lambeth, Inhabitants of, 7 Q. B. 587 ..	356	Roche v. Campaign, 34 L. O. 158 ..	371
— v. Saint Giles in the Fields, Inhabitants of, 7 Q. B. 529 ..	351	Rodgers v. Nowill, 33 L. O. 525 ..	127
— v. St. Paul's, Covent Garden, 7 Q. B. 232, 533 ..	353, 356	— v. Maw, 4 D. & L. 66; 15 M. & W. 444 ..	532, 571
— v. St. Margaret, Westminster, Inhabitants of, 7 Q. B. 569 ..	357	Rodich v. Gandell, 34 L. O. ..	228
— v. Sevenoaks, Inhabitants of, 7 Q. B. 136 ..	354	Rogers v. Vandercom, 4 D. & L. 102 ..	617
— v. Shipperbottom, 34 L. O. 63 ..	351	Ross v. Hill, 3 D. & L. 788 ..	527, 530
— v. Stone, 2 C. & K. 364 ..	296	Rosling v. Muggeridge, 4 D. & L. 298 ..	570, 572
— v. Smith, 7 Q. B. 543 ..	351	Routh v. Hutchinson, 8 Beav. 581 ..	56
— v. Stockton, Inhabitants of, 7 Q. B. 520 ..	353, 355	Rowley v. Reginam, 6 Q. B. 679; 7 Q. B. 316 ..	445
— v. Turk, 34 L. O. 133 ..	353	Russell v. Nichols, 33 L. O. 113 ..	129
— v. Totley, Inhabitants of, 7 Q. B. 596 ..	356	— v. Nicholls, 33 L. O. 18 ..	78
— v. Totnes Union, 7 Q. B. 690 ..	353	St. Alban's, Duke of, v. Skipworth, 8 Beav. 354 ..	132
— v. Vickery, 34 L. O. 154 ..	351	Salkeld v. Johnson, 2 C. B. 749 ..	447
— v. Vowchurch, Inhabitants of, 2 C. & K. 393 ..	296	Salmon v. Green, 8 Beav. 457 ..	151
— v. Welsh, 2 C. & K. 296 ..	295	Salford, Mayor of, v. Ackers, 16 M. & W. 85 ..	568
— v. Weymouth, Mayor of, 7 Q. B. 46 ..	445	Sanders v. Richards, 2 Coll. 568 ..	150
— v. Whalley, 2 C. & K. 376 ..	298	Sanderson v. Williams, 34 L. O. ..	62
— v. White, 2 C. & K. 464 ..	296	Scafe v. Fothergill, 8 Beav. 361 ..	174
— v. Wilcock, 7 Q. B. 317 ..	443	Scott v. Broadwood, 2 Coll. 446, 447 ..	150
— v. Willats, 7 Q. B. 516 ..	352	Selby v. Browne, 7 Q. B. 620 ..	574
— v. Woodrow, 15 M. & W. 404 ..	427	Seller v. Jones, 16 M. & W. 112 ..	527
— v. Worthenbury, Inhabitants of, 7 Q. B. 555 ..	354	Seaton v. Mapp, 2 Coll. 556 ..	78
— v. Wortley, 2 C. & K. 283 ..	296	Semple v. Pink, 34 L. O. ..	547
— v. York, Recorder of, 4 D. & L. 376 ..	444	Sewell v. Godden, 33 L. O. 550 ..	173
— v. Young, 2 C. & K. 466 ..	297	Sharland v. Leifchild, 34 L. O. 277 ..	552
Ralph, ex parte, 1 De Gex, 219 ..	270	Shaw, ex parte, 1 De Gex, 242 ..	209
Rankin v. Harwood, 2 Phill. 12 ..	127	Sherwood v. Beveridge, 2 Coll. 536 ..	200
		Short v. Stone, 3 D. & L. 580 ..	531
		Shuttleworth, in re, 33 L. O. 304 ..	445
		Sibree v. Tripp, 15 M. & W. 23 ..	496
		Sieveling v. Dutton, 4 D. & L. 192 ..	543
		Sivell v. Abraham, 8 Beav. 598 ..	33
		Slater v. Hodgson, 33 L. O. 189 ..	145
		Sladdon v. Cruikshank, 16 M. & W. 71 ..	512
		Sloman v. Bank of England, 14 Sim. 475 ..	132



	PAGE		PAGE
Solman v. Williams, 4 D. & L. 49	602	Turner, ex parte, 1 De Gex, 303	270, 271
Smith v. Effingham, Earl of, 34 L. O. 402	516	— in re, 3 Q. B. 166	437
— v. Page, 15 M. & W. 683	549	— v. Newport, 2 Phill. 14	127
— v. Gay, 2 Phill. 159; 33 L. O. 302	174	— v. Brown, 3 C. B. 167; 4 D. & L. 201	549, 550
— v. Jeffreys, 15 M. & W. 561	465	Tynte v. Reginam, 7 Q. B. 216	617
— v. Sparrow, 34 L. O. 154	495	Tyrer v. King, 2 C. & K. 149	325
— v. Nesbitt, 2 C. B. 286	553	Unwin, ex parte, 34 L. & O. 13	376
— v. Shirley, 3 C. B. 142	572	Van Sandau, 1 De Gex, 303	270, 271
— v. Wedderburne, 16 M. & W. 104; 4 D. & L. 296	601	Varty v. Duncan, 34 L. O.	407, 612
Snow v. Hole, 33 L. O. 284	177	Vernon v. Rudd, 33 L. O. 405	149
Souch v. Strawbridge, 2 C. B. 808	427	Vincent v. Hunter, 5 Hare, 320	149
Southgate v. Bohn, 16 M. & W. 34	447	Vogel v. Thompson, 34 L. O. 232	603
Sowden v. Marriott, 2 Coll. 578	200	Vollans v. Fletcher, 34 L. O.	598
Spence v. Meynell, 33 L. O. 92	465	Wainman v. Bowker, 8 Beav. 363	129
— v. Chadwick, 34 L. O. 80	552	Wallace, in re, 33 L. O. 112	9
Spencer v. Allen, 33 L. O. 500	175	Waller v. Joy, 16 M. & W. 60; 4 D. & L. 338	378
— v. Harrison, 2 C. & K. 429; 33 L. O. 204	324, 603	Walond v. Walond, 8 Beav. 332, 353	176
Sprye v. Reynell, 34 L. O.	179	Walker v. Blacklock, 4 D. & L. 4	378
Stamp, ex parte, 1 De Gex, 345	271	— v. Mellon, 2 C. & K. 346	325
Steadman v. Arden, 15 M. & W. 587	403, 465	— v. Remmett, 2 C. B. 850	447
Steedman v. Poole, 33 L. O. 113	31	Walls v. Symes, 34 L. O.	153
Stockbridge v. Owen, 34 L. O. 135	379	Walsh v. Trevanion, 34 L. O. 62	151
Stocken v. Dawson, 2 Phill. 141	175	Walstabb v. Spottiswoode, 15 M. & W. 501; 32 L. O. 180	402, 403
Stones v. Biron, 33 L. O. 141	56	Walther v. Moss, 7 Q. B. 189	10
Stopford v. Chaworth, 8 Beav. 351	10	Ward v. Audland, 8 Beav. 201	78
Stretton, in re, 14 M. & W. 806; 31 L. O. 150; 32 L. O. 226; 3 D. & L. 278	615	— v. Biddles, 34 L. O.	565
Stroud v. Watts, 2 C. B. 929	325	— v. Ward, 8 Beav. 397	148
Sturm v. Jeffree, 2 C. & K. 442	270	Waring v. Lee, 8 Beav. 247	76
Sturton, ex parte, 1 De Gex, 341	554	Watson v. Parker, 2 Phill. 5	128, 201
Suckling v. Wilson, 4 D. & L. 167	275	Washbourne v. Burrows, 34 L. O. 303	448
Suffield, Lord, v. Bond, 34 L. O.	572	Watts, ex parte, 1 De Gex, 265	273
Sutton v. Page, 3 C. B. 204; 4 D. & L. 171	495	Wellesley v. Wellesley, 34 L. O.	493
Swinnerton v. Heming, 33 L. O. 429	555, 607	Wells, in re, 33 L. O. 503	270
Talbot v. Buckley, 4 D. & L. 217, 306	425	— 8 Beav. 416	226
Tarry v. Newman, 15 M. & W. 645	515	Wesby v. Wesby, 34 L. O.	565
Tarte v. Darby, 15 M. & W. 601	331	Weymouth, ex parte, 34 L. O.	252
Tattersall v. Parkinson, 34 L. O.	79, 407	Webb, in re, 2 Phill. 10, 116	131
Taylor, in re, 34 L. O.	324	Welch v. Vickery, 15 M. & W. 59	30
— v. Jackson, 2 C. & K. 22	574	Wharton v. Walton, 7 Q. B. 474	440
— v. Stendall, 7 Q. B. 634	176	Wheldon, in re, 32 L. O. 371	224
— v. Wyld, 8 Beav. 159	76	White v. Hannock, 2 C. B. 850	527
Templer v. Sweet, 8 Beav. 464	149	Whitfield v. Lequentro, 33 L. O. 284	174
Thatcher v. Lambert, 5 Hare, 228	173	Whittaker v. How, 34 L. O.	358
Thomas v. Gwynne, 8 Beav. 512	131	Whitehead v. The Queen, 7 Q. B. 582	445
— in re, 2 Phill. 169	10	Wilkin v. Nainby, 8 Beav. 465	177
Thompson, in re, 8 Beav. 237	377	Wilders v. Stevens, 15 M. & W. 208	527
— v. Gordon, 4 D. & L. 49	513	Wilkinson v. Lloyd, 7 Q. B. 27	516
— v. Hardinge, 1 C. B. 940	32	Wilkes v. Hopkins, 1 C. B. 737	465
Thornel v. Roelants, 2 C. B. 290	516	Wilson v. Viscount Curzon, 15 M. & W. 532	402
Thorgett v. Haines, 14 M. & W. 367	10	— v. Robinson, 7 Q. B. 68	467
Titterton v. Sheppard, 3 D. & L. 775	174	— v. Wilson, 14 Sim. 403	129, 131
Tolson v. Jervis, 8 Beav. 364	618	Williams v. Bland, 2 Coll. 575	78
— v. Bishop of Carlisle, 3 C. B. 41	131	— v. Cresswell, 2 C. & K. 422	296
Tombs v. Roch, 2 Coll. 490	443	— v. Chambers, 33 L. O. 526	443
Toomer v. Gingell, 4 D. & L. 182	322	— v. Dowman, 7 Q. B. 112	427
Toulmin v. Hedley, 2 C. & K. 157	619	— v. Reginam, 7 Q. B. 250	443
Towers v. Turner, 4 D. & L. 177	514	Winch v. Brutton, 14 Sim. 379	60, 61
Town v. Campbell, 33 L. O. 454	178	Winckworth v. Winckworth, 8 Beav. 576	56
Towne v. Bonnin, 35 L. O. 502	378	Wingfield v. Newton, 2 Coll. 520, n.	60
Tomlinson v. Boughiey, 2 Coll. 844	462	Winer v. Winter, 5 Hare, 306	58
Townsend, in re, 34 L. O.	322	Winterbottom v. Ingham, 7 Q. B. 611	516
— v. Syms, 2 C. & K. 381	249	Wontner v. Shairp, 34 L. O. 156	403
Trevor v. Trevor, 34 L. O.	273	— 2 C. & K. 273	325
Tripp, ex parte, 1 De Gex, 293	553	Woodcock v. Houlditch, 16 M. & W. 124	487
Triston v. Barrington, 16 M. & W. 61; 4 D. & L. 273	382	Woodhouse, in re, 2 C. B. 290	9
Trulock v. Robey, 34 L. O.	555	Wood v. Hardisty, 2 Coll. 542	132
Tucker v. Barnaley, 4 D. & L. 292; 16 M. & W. 54	555	— v. Hume, 4 D. & L. 136	550
Tuglew v. Hooper, 33 L. O. 328	132	— v. Mytton, 34 L. O.	440
		— v. Curling, 15 M. & W. 626	572
		— v. Portarlington, 34 L. O.	328

Woodward v. Miller, 33 L. O. 452 .. .. 33	Wragg v. Wragg, 34 L. O. .. .. 357
Woodgate v. Potts, 2 C. & K. 457 .. 323, 326	Wright v. Burroughes, 4 D. & L. 226 .. 917
Woods v. Woods, 5 Hare, 229 .. .. 149, 152	Wroughton v. Barclay, 33 L. O. 477 .. .. 9
Woolmer v. Toby, 34 L. O. 302 .. .. 403	Wyld v. Hopkins, 15 M. & W. 517 ; 33 L. O. 115 .. .. 404, 405
Wormer v. Biggs, 2 C. & K. 31 .. .. 327	
Worthington v. Grimsditch, 7 Q. B. 479 .. 466	
Woods v. Durrant, 16 M. & W. 149 .. .. 573	Zulueta v. Miller, 4 D. & L. 186 ; 2 C. B. 895 555

## GENERAL INDEX TO VOLUME XXXIV.

- Account, action of, proposed recital, 541  
 Acts of parliament, defects in, 342  
 Advocating in Insolvent Debtors' Courts, 511  
 Affidavit Office in Chancery Act, 317, 398  
 Allottees, actions by and against, 90, 118  
 Amendment of Law, Annual Report of Society for promoting, 244  
 Analytical Digest of Cases, *see Contents*  
 Arbitration, Digest of Cases, 494  
 Arbitrator's certificate, signing judgment on, 364  
     unauthorized examination of party 20  
 Architecture, legal, 438  
 Arrest of members of parliament, 336, 469, 497, 523  
 Assessors of Small Debt Courts, grievance of, 72  
 Attorney's bill, non delivery of, set off, 471  
     annual registration, 576  
     bill of costs to be entitled in court, 97  
     certificate duty, 99  
     costs in parliament, taxation of, 140, 187  
     delivery of conveyancing bills, 142  
     gowns, when acting as advocates, 50  
     374  
     historical sketches, 388, 434  
     Law of Digest of Cases, 8, 224, 376  
     liability for bailiffs' fees, 337  
     negligence, 412  
     and solicitors' societies, 492  
     annual registration, 536, 611  
     to be admitted, 29, 52, 221, 268, 350  
 Bankruptcy and insolvency, alterations in the Law  
     of, 1, 16, 20, 65, 172, 185, 209, 577  
     Digest of Cases, 269  
     and Insolvency Act, 310  
     notes on, 429  
     commissioners' jurisdiction in insol-  
     vency, 573  
     fiats in vacation, fees on, 470  
     commissioners' jurisdiction of, 503, 545  
 Bar, separate, 233  
     contentions, 290, 316  
 Barristers called, 418  
 Bisset's Law of Partnership, 451  
 Bowyer's Commentaries on Constitutional Law, 500  
 Business of Common Law Courts, contemporaneous  
     business in banco and nisi prius, 233  
 Casual Carriers Act, 522  
 Cause Lists :  
     Chancery, 109, 159, 182, 206  
     Queen's Bench, 84, 620  
     Common Pleas, 111, 621  
     Exchequer, 87, 622  
     Nisi Prius, 15, 37, 603  
 Certificate duty of attorneys, 99  
     taking out renewal of, 100, 350  
 Chancery, new orders as to amending bills, 292  
     transfer of causes, 292  
 Charity Trustees Bill, 280  
 Chitty's Commercial and General Lawyer, 171  
 Circuit business, arrangement of, 363  
 Circuits of the judges, 208  
 Circuits of the Insolvent Debtors' Commissioners,  
     220  
 Commercial failures—avoidance of bankruptcy, 538  
 Commitment under Small Debts Act, 211  
 Common Law Digest of Principles, 525  
 Commons Inclosure Acts, 560  
 Conveyancing, Digest of Cases relating to 74, 512  
 Coote's Practice of the Ecclesiastical Courts, 367  
 Copyhold Commission Continuance Act, 437  
 Copyright, Colonial Act, 456  
     International, 459  
     in unpaid for contributions, 4  
 Costs, Digest of Law of, 224, 377  
     of proceedings in bankruptcy, 6  
     House of Commons, 293  
     in County Courts, 49, 172, 220, 375  
     under-sheriff's certificate, 120  
 County Courts appointments, 126  
     costs in, 49, 172, 220  
     decision as to splitting demands, 126  
     fees of practitioners, 145, 521  
     hearing articulated clerks, 418  
     jurisdiction, 99, 545, 562, 585  
     operation of act, 137, 243, 603  
     practice in, 4  
     public and profession, 557  
     remaining actions in old courts, 126  
     remedy against tenants, 17, 67  
     service of process, 99, 146  
     unqualified practitioners, 74  
 Crabb's digest of the Statutes, 284  
 Criminal Law Digest, 294  
 Custody of Offenders' Act, 287  
     Report, 240  
     recent alterations in, 537, 579  
 Decisions in the Superior Courts, reported by Bar  
     risters of the several courts, *see each No.* and the  
     Digest and Names of Cases  
 Deeds, registry of, 100, 145, 202  
 Denbigh and Flint Law Society, 375  
 Devise to subsequent wife of a witness, 5  
 Digest of Cases reported in all the Courts, *see*  
     *each No.*  
 Drainage of Lands Act, 94  
 Ecclesiastical Courts jurisdiction, 97, 540  
 Education, legal, report of commissioners, 165,  
     188, 214, 263, 343, 399, 488, 501  
 Election of Members of Parliament, Law relating  
     to, 305, 333, 385, 409, 449  
     returning officer, liability of, 498  
 Evidence, Digest of Cases on, 199, 465  
 Examination questions, 6, 123  
     result of, 52, 125  
     candidates passed, 147, 197  
 Fees on private bills in parliament, 50  
 Finlason's Leading Cases on Pleading, 609  
 Forgery or alteration of a writ by an attorney, 214  
 Foss's Lord Chancellors and Keepers in the reign  
     of King John, 237  
 Guarantee, form and effect of, 433

- Highway Rates Act, 499  
 Historical Sketches of the Profession, 388, 434, 511  
 Hodges' Law of Railways, 70  
 Inclosure of Commons Act, 120  
 Incorporated Law Society, 69, 194, 502, 562  
 Incumbered estates in Ireland, 194  
 Infant guardian assigned, 448  
 Inns of Court, history of, 517  
 Insolvency and Bankruptcy, alteration in the Law of, 1, 16, 20, 65, 172, 185, 209, &c.  
 Insolvents' order of protection, 373, 544  
 Joint-Stock Companies Act, 610  
 Judges' Chambers practice, 488  
 Judgment after arbitrator's certificate, 364  
 Judicial decisions, interference with, 608  
 Juvenile offenders, report on, 240  
 Act, 392  
 Kenyon, anecdote of Lord, 586  
 Law Association for Widows, &c., 293  
 Landlord and Tenant, Law of, 234, 607  
 Lawyers in Parliament, 257, 283, 309, 341, 402, 414  
 Leaby, Mr. David, Memoir of, 188  
 Leeds Law Society, 169  
 Legal Education, see *Education*  
 Local and Personal Acts, list of, 459, 506, 563, 591  
 London Small Debts Court Act, 471, 562  
 sittings, 496  
 fees, 504  
 Lunacy Commissioners, report of, 213  
 Magistrates' Cases, Digest of, 350  
 Manchester Law Association, 169, 375  
 Marriages of Quakers and Jews' Act, 562  
 Law of, 291, 438, 458  
 Masters extra. in Chancery, see *last No. each Month*  
 Mastership in Chancery, abolition of, 164, 256  
 Metropolitan and Provincial Law Association, 41, 92, 141, 169, 291, 375, 392, 428, 437, 457, 492, 502, 562, 583  
 Mitford's Chancery Pleadings, 314  
 Mortgage security, further stamps on, 49  
 Mosley's Treatise on the Law of County Courts, 491  
 Mutual Insurance Societies, 493  
 Negligence, attorney's liability for, 412  
 Nisi Prius, Digest of Cases on Law of Attorneys, 321  
 Notice to quit, insufficient, 234  
 Obituary, legal, 108, 205, 350  
 Parliament, dissolution of, 219, 309  
 Parliamentary costs, taxation of, 70, 140, 187, 212  
 fees on private bills, 50  
 privilege from arrest, 336, 469, 497, 523  
 proceedings relating to the law, 89, 146, 161, see list of bills in *each No.* during the session.  
 Partnerships, professional, dissolved, 112, 232, 332, 428, 536, 623  
 Passengers by Sea Act, 581  
 Perpetual commissioners, 112  
 Platt's Treatise on the Law of Leases, 396  
 Pleading payment, 262  
 costs of, 262  
 Digest of Cases, 148, 548, 568  
 Poor Law Administration Act, 453  
 Cases, Digest of, 350  
 Removal Act, 313, 414  
 Practice, Equity, Digest of, 173  
 Common Law, Digest, 600, 615  
 Principles of Equity, Digest of, 127  
 Private bill legislation, 113  
 acts, list of, 594  
 Privy Council Appeals, 205, 206  
 Digest of Cases, 247  
 Prisoners' legal advisers, 543  
 Profession, representation in parliament, 236, 361  
 results of the last session, 281  
 remuneration of, 557  
 Promotions in the Law, 256, 408  
 Promissory note payable to maker's order, invalid, 68, 169  
 Property Law, Digest of, 74, 512  
 Provincial Law Society's Rules, 122  
 Public Office in Chancery, abolition of, 172, 188  
 Public record buildings on the Rolls' estate, 370  
 Punishment, Secondary, by employment in deep sea fisheries, 194  
 cultivation of waste lands, 283  
 Railway Law, 90, 118  
 report of committee, 141  
 companies, bankruptcy of, 259  
 scrip, purchase of, 282  
 Cases, Digest of, 402  
 ating Stock in Trade Act, 437  
 registry of deeds, 100, 145, 220  
 returning officer, action against, 498  
 reviews, see *Contents and Authors' Names*.  
 Rogers's Chancery Practice, 171  
 sittings of the courts, 40, 64, 84, 156, 160, 182, 575  
 small Debt Court assessors, 72  
 Act, illegal commitment under, 211  
 illegal associations for recovery of, 243  
 solicitors, responsibility of, 283  
 stamps on separate agreements on same paper, 48  
 on railway scrip agreement, 282  
 on further mortgage security, 49, 610  
 Statutes effecting alterations in the law, see *Contents*  
 construction of, Digest, 101, 424, 442  
 list of public, 415  
 local and personal, 459, 506  
 Taxation of parliamentary costs, 70, 140, 187, 212, 293  
 of House of Commons Costs' Act, 337  
 Taxes on administering justice, committee of House of Commons to inquire into, 27, 74, 126, 143  
 Tenants holding over, remedy against in County Courts, 17, 67  
 Threatening Letters' Act, 286  
 Tithe Commissioners' Report, 246  
 Amendment Act, 366  
 Toulmin's Statutes and Orders in Chancery, 213  
 Transportation, Report of Committee on, 249  
 Trial, remarkable foreign, 586  
 Trust Funds and Relief of Trustees Act, 365  
 investment without professional aid, 369  
 Trustees, appointment of new, 100  
 Turnpike Act, 500  
 Undersheriffs' certificate for costs, 120  
 United Law Clerks' Society, report of, 317  
 anniversary, 318  
 Unqualified practitioners, 74, 585  
 Vacation visits to the old lawyers, 415, 523, 586  
 Vacation fees on bankruptcy fiats, 470  
 Wills, Law of, 5  
 Digest of Cases relating to, 56  
 Witness, shareholder, competency of, 775, 408  
 Yorkshire Law Society, resolutions of, 375





